

VIRGINIA DEPARTMENT OF MINES, MINERALS AND ENERGY

VIRGINIA GAS AND OIL BOARD HEARING

Tuesday, September 20, 2016

Lebanon, Virginia

**BOARD MEMBERS:**

Bradley C. Lambert – Chairman

Bill Harris – Public Representative

Bruce Prather – Oil and Gas Industry Representative

Donnie Ratliff – Coal Industry Representative

Mary Quillen – Public Member

Rita Surratt – Public Member

**APPEARANCES:**

Rita Surratt – Public Member for Dickenson County

Mary Quillen—Chairman of the Virginia Gas & Oil Board

Rick Cooper—Director of the Division of Gas & Oil and  
Principal Executive to the Staff of the Board

Paul Kugelman, Jr.—Senior Assistant Attorney General

Butch Lambert—Department of Mines, Minerals, and Energy

Donnie Rife – Public Representative

Donnie Ratliff – Coal Representative

Bruce Prather—Representative of Oil and Gas Industry

Sarah Gilmer—Staff Member of the Division of Gas & Oil

Sally Ketron—Staff Member of the Division of Gas & Oil

Blair Linford – Staff Member of the Division of Gas & Oil

*Prepared by: Joanna Boyd*

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1

2 **Butch Lambert:** Good morning ladies and gentlemen. It's time to call these proceedings to  
3 order this morning. First of all, I would ask if you have cell phones or any other communication  
4 devices, if you would please turn those off or put them on vibrate. These proceedings are being  
5 recorded. If you do have to take a call, please do that outside in the hall. We'd appreciate it.  
6 Thank you. I'd like to begin these proceedings this morning by asking the Board to please  
7 introduce themselves and I'll begin with Ms. Surratt.

8 **Rita Surratt:** I'm Rita Surratt. I'm a Public Member from Dickenson County.

9 **Paul Kugelman, Jr.:** Paul Kugelman with the Virginia Attorney General's Office.

10 **Butch Lambert:** And I'm Butch Lambert with the Department of Mines, Minerals, and Energy.

11 **Donnie Ratliff:** Donnie Ratliff from Wise County, representing coal.

12 **Donnie Rife:** Donnie Rife, Public Member. Dickenson County.

13 **Bruce Prather:** I'm Bruce Prather. I represent the Oil & Gas Industry.

14 **Mary Quillen:** Mary Quillen, Public Member.

15 **Butch Lambert:** Thank you.

16 **Item Number 1**

17 **Butch Lambert:** We'll begin this morning with, we will now take public comments. Those  
18 wishing to speak and have signed up and I'll call you in the order that you have signed up and  
19 first we'll have is Donald Joyce. Mr. Joyce, please come up and state your name for the record.

20 **Donald Joyce:** My name is Donald Joyce. I live at 5656 Fox Ridge Road, Ennice, NC.

21 **Butch Lambert:** Good morning, Mr. Joyce.

22 **Donald Joyce:** I was here pertaining to the Y47.

23 **Butch Lambert:** Do you have a Docket Number for that, Mr. Joyce?

24 **Donald Joyce:** I sure do. I know I've got it here somewhere. Docket Number VGOB-16-0920-  
25 4098.

26 **Mary Quillen:** What agenda item is that?

27 **Donald Joyce:** Agenda item?

28 **Mary Quillen:** Yes.

1 **Donald Joyce:** 17.

2 **Mary Quillen:** Thank you.

3 **Butch Lambert:** Is your comments related directly to that Docket Item, Mr. Joyce?

4 **Donald Joyce:** Yes, sir.

5 **Butch Lambert:** Would you like to wait until that Docket Item's called?

6 **Donald Joyce:** That'd be fine.

7 **Butch Lambert:** Okay, that'd be great. So that way we could just incorporate your comments  
8 into that Docket Item. If you don't mind. If that's okay with you.

9 **Donald Joyce:** That's fine.

10 **Butch Lambert:** Okay. Thank you, Mr. Joyce, and when that Docket Item is called, you can  
11 come forward again. Next, we're calling Brenda Justice. Good morning, Ms. Justice. Would you  
12 please state your name for the record?

13 **Brenda Justice:** I'm Brenda Justice at 1101 Long Wall Lane, Raven, VA and I'm hear about the  
14 Linkous Horn heirs. Some of my family got money; some of us didn't and we didn't know what  
15 to do. Inquired by Rick Cooper to see why the rest of us didn't get our money. Levin White had  
16 been working on something for us and he said three months ago he done turned it back over to  
17 CNX for us to get our money. But some of us got the money and some of us didn't and I'm one  
18 of the Linkous Horn heirs.

19 **Butch Lambert:** When we have CNX up to hear some of their cases this morning, we'll inquire  
20 for you...

21 **Brenda Justice:** Okay. I appreciate that.

22 **Butch Lambert:** ...on what exactly might be going on. Have they contacted you?

23 **Brenda Justice:** No.

24 **Butch Lambert:** Not at all?

25 **Brenda Justice:** No, I contacted Rick Cooper and he didn't get back with me, but he said he  
26 would but he ain't. So, I thought I'd come and find out. You know, if one heir gets money, the  
27 others ought to. I mean, you know.

28 **Butch Lambert:** Just set right there. Let's ask Mr. Cooper for an update.

1 **Rick Cooper:** I have been following up on that. From what I understand, you signed a split  
2 agreement.

3 **Brenda Justice:** Well, they said I did. So Levin White checked in on that and said he's going to  
4 let it stand, so.

5 **Rick Cooper:** So, Anita's coming up here but I have talked to Anita about that. You did receive  
6 one a while back, right?

7 **Brenda Justice:** No. I only got \$20.00 two years ago.

8 **Butch Lambert:** Right. It's been a while back.

9 **Brenda Justice:** But that wasn't...

10 **Rick Cooper:** I think your concern is that the split agreement is still valid, right?

11 **Brenda Justice:** Well, they say they are but, you know. If they are, how come it's broke, I mean,  
12 you know? They broke the contract, if, whatever they got on Grundy. They shouldn't put my  
13 money in escrow if they're going to make us go by that contract.

14 **Butch Lambert:** Do we know if she, is being or should be disbursed?

15 **Brenda Justice:** All the rest of them got it that signed. That was, they say they signed. CNX said  
16 they signed most of us didn't sign. We signed the four-page contract but they had 16 pages on  
17 Grundy. So that's why Levin White was checking in on it and he told us he's just going to let it  
18 stand, so he told them to go ahead and get us what they're supposed to.

19 **Rick Cooper:** So Anita, we talked about this, so Anita can speak on behalf of CNX. I apologize  
20 for you coming right in and setting down but you timed it perfectly.

21 **Anita Duty:** That's okay.

22 **Rick Cooper:** So this is Brenda Justice beside us here.

23 **Butch Lambert:** Anita, could you fill us in a little bit more, why since she signed a split  
24 agreement she's not been receiving checks?

25 **Anita Duty:** Well, until, I think last week, it had been turned over to, I guess, the state, to  
26 investigate the signatures.

27 **Rick Cooper:** That's right, she spoke to Levin White. She mentioned that.

1 **Anita Duty:** Right and so in our mind that was still in litigation. We didn't know how to handle  
2 it. Did we pay her 50% or did we pay her 100%. So that was just resolved, we just got an email, I  
3 think, last week.

4 **Rick Cooper:** Yes.

5 **Anita Duty:** So now we can proceed.

6 **Mary Quillen:** Is this a 50/50 split?

7 **Anita Duty:** Yes.

8 **Bruce Prather:** Okay, so everything...

9 **Anita Duty:** Because I think she was uh....

10 **Butch Lambert:** Can we just proceed here and not have all this [Inaudible].

11 **Anita Duty:** She was just disputing the fact that that was her signature, and so that was just, like  
12 I said, just resolved last week. Now that that's resolved, we know that we'll do a 50/50 and now  
13 we can proceed. That's the reason she wasn't paid.

14 **Butch Lambert:** When can Ms. Justice expect the next check?

15 **Anita Duty:** Well, depending on what the status of the orders are already, because we've already  
16 filed some of those. Some of those may be pending. I mean, we can, I can look at that, you know,  
17 and let Mr. Cooper know but right now we have several of those pending already.

18 **Butch Lambert:** So Mr. Cooper, could you follow up with Ms. Justice in the future, when you  
19 see that come before the Board to be disbursed?

20 **Rick Cooper:** I will do that, yes.

21 **Anita Duty:** We'll probably need to get a W-9 from her. Just to make sure that we do have, I  
22 don't know if you've sent us one because we haven't asked for it.

23 **Donnie Rife:** Will you take care of that today?

24 **Anita Duty:** Yeah.

25 **Mary Quillen:** Just to clarify, Anita, the reason what the dispute was, was the validity of her  
26 signature on the split agreement?

27 **Anita Duty:** According to her. I mean, they were the ones, her and...

28 **Mary Quillen:** Right, and she said it wasn't her signature?

1 **Anita Duty:** We weren't a party to it so I don't know what the...

2 **Mary Quillen:** Oh.

3 **Anita Duty:** I don't know what the problem was.

4 **Donnie Ratliff:** Is that what the attorney was, is that part of his job...

5 **Anita Duty:** It was turned over to...

6 **Donnie Ratliff:** ...to determine whether or not that signature was valid?

7 **Butch Lambert:** It was turned over to the inspector, Inspector General's Office.

8 **Anita Duty:** I mean, Ms. Justice can probably speak more to it. I don't know what the issue was.

9 I just know...

10 **Donnie Rife:** I believe we can get this fixed for you today, ma'am.

11 **Brenda Justice:** Well, he said that Levin White told me that he turned it back over to them three

12 months ago to pay us, and they paid some of us and they didn't pay me and Ronnie, Ronnie

13 Osborne.

14 **Anita Duty:** We just received an email last week and Mr. Cooper was copied on that same

15 email. We just received it last week.

16 **Rick Cooper:** That is correct. They said that, he could not verify that, he could not say that the

17 signature was falsified, is what I believe the...

18 **Butch Lambert:** But as far as CNX is concerned, it's been settled and you're ready to disburse?

19 **Anita Duty:** We will file petitions if there's not one already pending.

20 **Butch Lambert:** Okay.

21 **Paul Kugelman, Jr.:** If there's a split agreement, we don't need a petition, if it's already been

22 determined.

23 **Anita Duty:** Yes, you do.

24 **Mark Swartz:** Yeah, it's in escrow.

25 **Paul Kugelman, Jr.:** Oh, it's in escrow still. I thought the, okay. I apologize.

26 **Mark Swartz:** What we have just heard was a person complaining that we haven't paid her and

27 the reason she wasn't paid is she claimed her split agreement was valid. Just so that we

1 understand; and apparently it was resolved by the Inspector General in the last week and we're  
2 going to move forward, but this is not on us.

3 **Butch Lambert:** Yeah, we understand, and the Board's well aware of the issue with the  
4 Inspector General.

5 **Donnie Ratliff:** Well, there were other people on the split agreement that have been paid, it's  
6 just that she's objecting about the signature.

7 **Mark Swartz:** She was, yes.

8 **Donnie Ratliff:** Okay.

9 **Donnie Rife:** But her money's still in escrow so it's...

10 **Mark Swartz:** Because of her objection.

11 **Donnie Rife:** ...okay, that's fine. We'll get this fixed today.

12 **Brenda Justice:** Alright. Thank you.

13 **Butch Lambert:** Okay, thank you, Ms. Justice. Mr. Grady Horn? Good morning, Mr. Horn.  
14 Could you state your name for the record?

15 **Grady Horn:** I'd appreciate if you all would speak up. I have a hearing problem.

16 **Butch Lambert:** Is that any better, Mr. Horn?

17 **Grady Horn:** Yeah, boy!

18 **Butch Lambert:** Okay. Mr. Horn, could you state your name for the record, please?

19 **Grady Horn:** I'm Grady Don Horn. My address is in Raven, VA 24639.

20 **Butch Lambert:** Thank you, and what are your concerns, Mr. Horn?

21 **Grady Horn:** Well, I had gas rights. I lived on 618 up there for several years. I had my gas  
22 rights there, and I never was paid for none of it and that's been probably been 21 years ago. I left  
23 there and then went about a mile on down the road. I live at the present place right now; I live on  
24 down the road from it. I moved from there. I got a letter stating that I was owed a hundred and  
25 some dollars.

26 **Butch Lambert:** Who was that from, Mr. Horn?

27 **Grady Horn:** It's from, it's got CONSOL on it, you know, as the address.



1    **Butch Lambert:** So what is your concern?

2    **Grady Horn:** Well, I was just wondering why I haven't been paid. I mean, they owe me money  
3    now but why didn't they owe me money 20 years ago?

4    **Bruce Prather:** Was your father getting payments?

5    **Grady Horn:** Do what, now?

6    **Bruce Prather:** Was your father getting payments?

7    **Grady Horn:** Oh, no.

8    **Donnie Rife:** No family relatives was getting the check from them?

9    **Grady Horn:** Oh, no. No, I was the sole owner of the place.

10   **Donnie Rife:** You could have been here 20 years ago.

11   **Grady Horn:** Yeah.

12   **Rick Cooper:** Mr. Chairman, if I could; do you know what well you're associated with?

13   **Grady Horn:** No, I do not know.

14   **Rick Cooper:** So if you and I could get...

15   **Grady Horn:** It might be on some of the literature that I've got.

16   **Rick Cooper:** So if you'll get with me, I'll follow up on that and try to help you out.

17   **Grady Horn:** Okay.

18   **Rick Cooper:** Alright.

19   **Donnie Rife:** Mr. Cooper's like a blood hound. He knows where every well in the country is.

20   **Grady Horn:** That's great. Somebody needs to know that, don't they?

21   **Butch Lambert:** So if you'll get with Mr. Cooper here, he will try to work out the issue with  
22   you and see where you are and what you're owed.

23   **Grady Horn:** Okay.

24   **Butch Lambert:** Can you give him a card.

1 **Rick Cooper:** That's what I'm going to do, right now. If you hang around here today, during the  
2 break we can talk or you can call me anytime on that number. Whatever is good for you.

3 **Grady Horn:** Okay, Rick. Thank you. Anything else, Mr. Horn?

4 **Grady Horn:** No, I reckon that'll be all.

5 **Butch Lambert:** Okay.

6 **Grady Horn:** Thank you, all. I'm taking this with me and set down.

7 **Butch Lambert:** Yeah, absolutely, and if anyone else needs a hearing impaired device, Mr.  
8 Cooper would be glad to fix you right up. Okay, I have Joseph Sanzone. Good morning.

9 **Joseph Sanzone:** I'm Joseph Sanzone. I'm an attorney from Lynchburg, VA, and I was hired by  
10 the heirs of James C. Blankenship who died around 1910, to help them with a disbursement. I  
11 always love coming to this area of the country. It's beautiful down here and I look at all of your  
12 rivers and there are many good spots to fish, so it's hard to find a good one if you don't know  
13 where you're going and you've never been down here. So, with Mr. Blankenship and this issue  
14 with the disbursement, I need to y'all to help me get in the river at the right spot on this to do the  
15 best work.

16 **Donnie Rife:** We'll walk you in instead of throwing you in over your head.

17 **Joseph Sanzone:** Oh, then I know that I'm with some people who would know where they're  
18 going and that's good. So, in looking at the problem, there are so many heirs to this parcel and  
19 the parcel I'm talking about is Tract 6 and 7 within the BUS-1 sealed GOB Unit established by  
20 the Board in 1991. The way that I think the problem needs to be solved, and my clients have  
21 agreed for me to this, is to re-open the old estate of Mr. Blankenship from 1910. We hired a  
22 professional genealogist to look at who the heirs were and what's happened with the  
23 Blankenship's since the time of his death. He reserved mineral rights. He does not own the  
24 property and did not own the property at the time of his death, but he still owned the mineral  
25 rights at that point and there was a lot of that back there during that period of time. There was no  
26 will in the family among these heirs that we can find until about 1971, so all these are intestate  
27 concessions and that has a meaning under the law that, some of these people who may have had  
28 an interest and died without children, lost that interest. But, we're going to go ahead and open  
29 that estate; go to Grundy and get that done here in the next little bit. I'm been in contact with Ms.  
30 Duty and Ms. Duty, I haven't had the opportunity or pleasure to meet you before, but we've  
31 talked to your office and we've talked to you before. What I really need, and I need some  
32 assistance from Ms. Duty, when we get ready to file this and after we file this, to identify the  
33 particular parcel that we're talking about and what money might have been escrowed because,  
34 according to a letter I'm looking at from 2008, it looks like about \$330,000 had been escrowed at  
35 that point, concerning that particular property and there may be more since then. There probably  
36 is more since then. But what we anticipate in doing is opening the estate; having a judge rule as

1 to the ownership portions of the, each one of the family members; have a hearing on that; let him  
2 issue an order; and then that assists Ms. Duty in whatever money might be available at that point.  
3 I also think by looking at the list of my heirs, that we have a number of people who would be  
4 able to do the same thing for their respected family's, and be able to assist in getting the  
5 individual shares to their family members by qualifying them, maybe some of the older estates  
6 that exist within their family. I just have no access to what information might be there on what,  
7 what those estates might be. I'm not concerned with those as much today as I am today with the  
8 Blankenship estate, and I'd just like to start this with Mr. Blankenship's estate being re-opened;  
9 work with Ms. Duty; and I'm only here today to ask for her assistance and the Board's assistance  
10 with that process, as we move forward over the next few months and year, probably.

11 **Butch Lambert:** It depends on the area. Do you know how many heirs were involved?

12 **Joseph Sanzone:** Well, it's well over 100, because as I said, we hired a genealogist that took it  
13 up through the 70's and into the 80's, and I think by contacting some of these people we could  
14 find the additional heirs, but there are quite a few heirs and I think that is one of the big, I would  
15 imagine that's one of the big problems with this Board faces, is how you distribute those small  
16 shares, and I don't think you could do it effectively, like I this case, unless you go back to the  
17 Circuit Court, get the estate open, get the Judge to rule on it, and then give a distribution order.

18 **Donnie Rife:** That's the whole purpose to setting up the escrow, because you're right, the  
19 heirship is a tremendous problem. Just finding them and just getting people to recognize the  
20 fact...we can't even hardly get them to accept a certified piece of mail in order to pay them their  
21 money.

22 **Joseph Sanzone:** Well, I've heard that from another Board member.

23 **Donnie Rife:** Oh, believe me. It's true.

24 **Joseph Sanzone:** And I can see how that would happen. I hope this would help the Board; I  
25 hope that it would help my clients, and all of their heirs. I know it would, and this is a fair way to  
26 do it. I just ask for your help, and Ms. Duty, I look forward to working with you on it.

27 **Bruce Prather:** Well, really what you're doing, you're substituting the judge for the will.

28 **Joseph Sanzone:** Yes.

29 **Bruce Prather:** ...what's been filed back years ago.

30 **Joseph Sanzone:** Yes, that's exactly, which should have been filed years ago and since it was  
31 not done, we'll reopen the estate, have an administrator to the estate, and move forward in that  
32 way.

1 **Mark Swartz:** I think almost all the Blankenship interest back in the 1970's. If there is \$300,000  
2 in escrow, it's the whole, whatever's in escrow hardly any of it. There was one Blankenship, and  
3 so, whatever the amount of the deposit is, hardly any of it will be for the Blankenship's. Sounds  
4 like we have a title issue, okay? Because we think CONSOL purchased the interest. What would  
5 that be? 45 years ago? If we missed an interest or if the title wasn't released, share with us what  
6 you think this will be. The balls kind of in your court and I think you're trying to dump it in mine  
7 and I'm pushing back.

8 **Joseph Sanzone:** No.

9 **Mark Swartz:** But I certainly would welcome any evidence that we've missed...the people that  
10 you represent, we would look at that; take a good look at that, see if we have a title conflict,  
11 resolve some issues.

12 **Joseph Sanzone:** Well, I've been contacting someone for a year and a half and I haven't had any  
13 resolution at all.

14 **Mark Swartz:** Okay, what have you sent us that shows that we've got it wrong?

15 **Joseph Sanzone:** I've sent you four letters.

16 **Mark Swartz:** No, that's not a deed.

17 **Joseph Sanzone:** I've sent you the original source deed.

18 **Mark Swartz:** From what year?

19 **Joseph Sanzone:** I've sent you the source deed from September 1905.

20 **Mark Swartz:** Right, and we say we bought it in 1970, so you want title up until then?

21 **Joseph Sanzone:** What did you send me from 1970?

22 **Butch Lambert:** Okay, hold on just a minute. The things you all are discussing are nothing that  
23 this Board can help with. This is an issue that you parties need to work out and then the Board  
24 will act upon resolution for disbursement, so.

25 **Joseph Sanzone:** Mr. Lambert, let me just say in response to that, if there was a person who died  
26 without a will in 1910 and that interest was acquired in 1970, I would think that it's virtually  
27 impossible to cover all the interest that occurred with the heirs from that point, that maybe  
28 something was purchased and that's something to work out, but I still think that it needs to be  
29 done within the context of the Circuit Court and what happens there. I agree with you, Mr.  
30 Lambert, that's not for here... for today, but the point I'm trying to make, we have a hard time  
31 finding, as heirs, what money has been escrowed, how it's been escrowed, and what's been  
32 treated with that, so, we don't have the type of contact point that we would like in this case to

1 say, this is what we're disputing, this is what is being argued over, and I'd like someone, if not  
2 Ms. Duty, somebody, to send me a letter to say what's been escrowed off of these tracts so that  
3 we can take that to the Circuit Court and make a decision as to what's been...

4 **Mark Swartz:** Well, it's Exhibit E.

5 **Butch Lambert:** Yeah, Mr. Cooper and his staff can help with that we have the record of those  
6 and how those tracts...what has been escrowed. Probably can show you production on those too,  
7 so, if you want to contact Mr. Cooper to help with some of that, as far as the amounts in escrow  
8 from those units. We'll be able to help you with that.

9 **Mark Swartz:** [Over talk] And reasons.

10 **Joseph Sanzone:** That's wonderful, and that would be all that we would need and then we can  
11 move forward. Thank you.

12 **Item Number 2**

13 **Butch Lambert:** Okay, now we'll move into our Docket for this morning and the first item on  
14 our agenda is Docket Item Number 2 and it's a petition from EQT Production Company, for  
15 disbursement of funds on behalf of all known owners in Tracts 1, 2, 3, 4 and 5, pursuant to  
16 House Bill 2058. This is Docket Number VGOB 04-1214-1372-02. We have received a letter  
17 from Mr. Kaiser, on behalf of EQT, requesting an extension of that Docket Item until October.  
18 So that item will be extended.

19 **Item Number 3**

20 **Butch Lambert:** A petition from EnerVest Operating, LLC, for pooling of Well No. VCI-  
21 531608. Docket Number VGOB 16-0816-4095. All parties wishing to testify, please come  
22 forward.

23 **Tim Scott:** Gus Janson, Tim Scott, and Aaron Anderson for EnerVest Operating, LLC.

24 **Butch Lambert:** Good morning.

25 **Tim Scott:** Morning.

26 **Butch Lambert:** You may begin.

27 **Sarah Gilmer:** Do you swear and affirm your testimony is the truth, the whole truth, and nothing  
28 but the truth?

29 **Tim Scott:** I do. Thank you, Mr. Chairman.

30 **Butch Lambert:** Thank you, Mr. Scott.

1 **Tim Scott:** Mr. Anderson, please state your name, by whom you're employed and your job  
2 description.

3 **Aaron Anderson:** My name's Aaron Anderson. I work for EnerVest Operating, LLC, and I'm  
4 an Associate Landman.

5 **Tim Scott:** Are you familiar with this application that we filed?

6 **Aaron Anderson:** Yes, sir.

7 **Tim Scott:** And where is this unit located?

8 **Aaron Anderson:** In the Nora Coalbed Gas Field.

9 **Tim Scott:** And how many acres does it contain?

10 **Aaron Anderson:** 58.77.

11 **Tim Scott:** And EnerVest has rights under lease to drill and also ownership interests. Is that  
12 correct?

13 **Aaron Anderson:** That is correct.

14 **Tim Scott:** Now this was originally set for August and in the meantime, you all have made  
15 additional leasing efforts, is that correct?

16 **Aaron Anderson:** That's correct.

17 **Tim Scott:** Are we going to dismiss any parties' respondent today?

18 **Aaron Anderson:** We are.

19 **Tim Scott:** Who are they, please?

20 **Aaron Anderson:** Evelyn Coleman and Brenda Sue Duty.

21 **Tim Scott:** As a result of those efforts, have you filed revised Exhibits B and B3?

22 **Aaron Anderson:** WE have.

23 **Tim Scott:** Okay, and have you attempted to reach an agreement with the parties respondents  
24 and what efforts were made?

25 **Aaron Anderson:** Yes, we've sent everybody leases and made some phone calls.

26 **Tim Scott:** Okay. How was notice of this hearing provided?

27 **Aaron Anderson:** Certified Mail.

1 **Tim Scott:** Okay, have we provided the proof of mailing to the Board?

2 **Aaron Anderson:** Yes.

3 **Tim Scott:** Do we have any unknown owners in this unit?

4 **Aaron Anderson:** No, sir.

5 **Tim Scott:** What would be the lease terms you would offer, in the event you were able to reach  
6 an agreement with the parties listed on Exhibit B3?

7 **Aaron Anderson:** \$25.00 an acre for a five-year, paid up lease.

8 **Tim Scott:** And EnerVest is authorized to conduct business within the Commonwealth, is that  
9 right?

10 **Aaron Anderson:** Yes, they are.

11 **Tim Scott:** And there's a blanket bond on file?

12 **Aaron Anderson:** Yes.

13 **Tim Scott:** Now, you just testified that you would offer \$25.00 an acre in a five-year, paid up  
14 lease. Is that correct?

15 **Aaron Anderson:** That's correct.

16 **Tim Scott:** Do you consider that to be reasonable compensation for a lease in the Appalachian  
17 Basin?

18 **Aaron Anderson:** I do.

19 **Tim Scott:** Now, how much of the gas estate does EnerVest have under lease?

20 **Aaron Anderson:** 8.32647619%.

21 **Tim Scott:** Okay, and that does include tracts that EnerVest is the simple owner of the minerals.  
22 Is that right?

23 **Aaron Anderson:** That's correct.

24 **Tim Scott:** Okay. What percentage of the gas estate are you attempting to pool today?

25 **Aaron Anderson:** 1.615111111%.

26 **Tim Scott:** Okay, and we don't have an escrow requirement, is that right?

27 **Aaron Anderson:** That's correct.

1 **Tim Scott:** And again, we don't have any unknowns?

2 **Aaron Anderson:** That's correct.

3 **Tim Scott:** And are you requesting the Board to pool the parties listed on Exhibit B3? The  
4 revised Exhibit B3?

5 **Aaron Anderson:** Yes, sir.

6 **Tim Scott:** And you're also asking that EnerVest be named the operator. Is that correct?

7 **Aaron Anderson:** That is correct.

8 **Tim Scott:** Now if the Board approves our application today and elections are made under the  
9 order entered, what would be the address for making any elections?

10 **Aaron Anderson:** It's EnerVest Operating, LLC, 406 W. Main St., P.O. Box 2136, Abingdon,  
11 VA 24212. That's attention Chuck Akers, Land Manager.

12 **Tim Scott:** And as far as any other correspondence regarding this unit, should that also be the  
13 address?

14 **Aaron Anderson:** Yes.

15 **Tim Scott:** That's all I have for Mr. Anderson.

16 **Butch Lambert:** Any questions from the Board? [No response] You may continue, Mr. Scott?

17 **Tim Scott:** Thank you, Mr. Chairman. Mr. Janson, please state your name, by whom you are  
18 employed, and your job description, please.

19 **Gus Janson:** My name is Gus Janson. I'm employed by EnerVest Operating, LLC, as the  
20 Geology Advisor.

21 **Tim Scott:** And you participated in the preparation of this application, is that right?

22 **Gus Janson:** I did.

23 **Tim Scott:** Okay. What's the total well depth?

24 **Gus Janson:** Total well depth is 2,143 feet.

25 **Tim Scott:** And the estimated reserves for this unit?

26 **Gus Janson:** 620 million cubic feet of gas.

27 **Tim Scott:** And you just said that you participated in participation of the AFE. Is that correct?



1 **Gus Janson:** That is correct.

2 **Tim Scott:** So you're familiar with the well cost?

3 **Gus Janson:** I am.

4 **Tim Scott:** What is the proposed dry hole cost?

5 **Gus Janson:** \$147,100.

6 **Tim Scott:** And the completed well cost?

7 **Gus Janson:** \$348,850.

8 **Tim Scott:** And we've submitted the AFE with our application, is that correct?

9 **Gus Janson:** We did.

10 **Tim Scott:** Now, in your opinion, if the Board grants our application, would conservation  
11 prevent ways to protect correlative rights?

12 **Gus Janson:** Yes, it would.

13 **Tim Scott:** That's all I have for Mr. Janson.

14 **Butch Lambert:** Any questions from the Board? [No response] Anything further, Mr. Scott?

15 **Tim Scott:** That's all I have, Mr. Chairman.

16 **Butch Lambert:** Do I have a motion?

17 **Donnie Rife:** Motion made for approval, Mr. Chair.

18 **Mary Quillen:** Second.

19 **Butch Lambert:** I have a motion and I have a second. Any further discussion? [No response] All  
20 in favor, signify by saying yes.

21 **Board:** Yes.

22 **Butch Lambert:** Opposed no?

23 **Donnie Ratliff:** I'll abstain, Mr. Chair.

24 **Butch Lambert:** One abstention, Mr. Ratliff. Thank you, Mr. Scott.

25 **Tim Scott:** Thank you, Mr. Chairman.

1 **Item Number 4**

2 **Butch Lambert:** A petition from CNX Gas Company, LLC, for (1) the disbursement of funds  
3 from escrow heretofore deposited with the Board's Escrow Agent, attributable to a portion of  
4 Tract 1B, as depicted upon the annexed table; and (2) authorization to begin paying royalties  
5 directly to the parties listed in the petition; and (3) Dismissal of coal owner. This is Docket  
6 Number VGOB 90-1010-0032-10. All parties wishing to testify, please come forward.

7 **Mark Swartz:** Mr. Chairman, it looks like it's just Anita and I hear on this. I would ask perhaps  
8 you could call Items 17 and 18 so that Mrs. Keen, right? If we could call that and get her on her  
9 way.

10 **Butch Lambert:** Yeah, we could do that. Call 17?

11 **Mark Swartz:** 17 and 18.

12 **Butch Lambert:** Together?

13 **Mark Swartz:** I think they're on the same...

14 **Butch Lambert:** Are they the same?

15 **Rick Cooper:** They are.

16 **Butch Lambert:** Okay. Alright we are going to skip down on the docket and instead of the one  
17 we just called, we're going to be calling Docket Item Number 17.

18 **Item Number 18**

19 **Butch Lambert:** A petition from CNX Gas Company, LLC, for pooling under Oakwood  
20 Coalbed Methane Gas Field...

21 **Rick Cooper:** No.

22 **Butch Lambert:** That's 17.

23 **Rick Cooper:** Actually 18 and 19.

24 **Mark Swartz:** I'm sorry. 18 and 19. Going from memory is never good.

25 **Mary Quillen:** 18 and 19?

26 **Butch Lambert:** We're calling 18 and 19. Okay, calling Docket Item Number 18. On the  
27 Board's own motion, the Division of Gas and Oil requests that CNX revise the previously  
28 approved petition for VGOB 96-0116-0530-05. This is Unit V28, to remove Walter Keen. He is  
29 now deceased and no direction has been given as to how his proceeds need to be distributed.

**Item Number 19**

**Butch Lambert:** On the Board's own motion, the Division of Gas and Oil requests that CNX revise the previously approved petition for VGOB 02-0319-1008-05 for Unit VP2SGU1, to remove Walter Keen. He is now deceased and no direction has been given as to how his proceeds need to be distributed. All parties wishing to testify, please come forward.

**Butch Lambert:** Could you all state your name for the record, please.

**Sarah J. Keen:** My name is Sarah J. Keen.

**Sandra Smith:** And I'm Sandra Smith, the daughter.

**Sarah J. Keen:** My daughter.

**Butch Lambert:** Good morning.

**Mark Swartz:** Mark Swartz and Anita, also.

**Sandra Smith:** And Mr. Galumbeck. Robert Galumbeck. He's mother's attorney and due to other court proceedings, he was unable to be here today.

**Donnie Rife:** We'd rather talk to you guys instead of attorneys anyway.

**Sandra Smith:** Well, thank you.

**Mark Swartz:** I could give it to you in 25 words or less.

**Butch Lambert:** You will get a gold star.

**Mark Swartz:** We had a hearing and we ordered money to be disbursed. Mr. Keen died; there's an estate; the former Mrs. Keen has a very substantial judgement [Inaudible] out of state and there is a conflict as to where that money should go. I've been in touch with her lawyer. He intends to lean the money but regardless of his intentions, we now have someone that was ordered to receive funds that is deceased and we have a question as to who those funds should go to. Whether or not they're going to be subject to a lien and our proposal, so that's the facts. Our proposal is that we amend Table 1 to remove Mr. Keen and then the petition to do that as well, and then move forward so we can pay everyone else. There are other people involved in that disbursement, and leave those moneys in escrow. I assume from talking to her lawyer yesterday and communicating with him by email last week, he seems like he knows what he's doing. I think he's going to move forward, but if he doesn't, we can readdress this but there appears to be a title conflict; a solution perhaps, that doesn't involve us, and someone will come back to us with a court order, hopefully.

**Mary Quillen:** Is there a well?

1 **Donnie Rife:** That's what I was going to ask?

2 **Mark Swartz:** Well, there's an estate. Whether or not there is a well, I don't know.

3 **Sarah Keen:** There is a well. He...

4 **Mark Swartz:** It doesn't matter if there's a well.

5 **Paul Kugelman, Jr.:** There's an intervening legal...

6 **Mark Swartz:** As a judgement for almost a quarter of a million dollars, I'm being told, against  
7 Mr. Keen, she wants to collect it from the estate, so it's not like an heirship or any of that.

8 **Mary Quillen:** Okay, so it is...that's what I wanted...

9 **Mark Swartz:** It's a judgement lien that they're trying to...

10 **Mary Quillen:** So it's not involving an heirship?

11 **Sandra Smith:** No, no.

12 **Mark Swartz:** And I assume that the heirs in that estate are going to contest this so it's probably  
13 looking at claims in an estate to be resolved by...

14 **Mary Quillen:** But currently, we have no heirship?

15 **Sarah Keen:** There is no heirship.

16 **Sandra Smith:** We are her children. He has four children and, however, there is nothing coming  
17 to us when the will was written, after him leaving the hospital the last time, it indicated  
18 everything and I should have it here, that everything was to go to the lady that he had been with  
19 and that she was the executor of his estate. However, back in 2006-2007, 2006. June 23, 2006,  
20 there's a final divorce decree and Mr. Galumbeck had filed judgement against the estate because  
21 he owed mother a tremendous amount of money. It really is over a quarter of a million dollars  
22 that was not paid and not followed through.

23 **Mary Quillen:** Okay, you've clarified the situation. I did not know what the marital situation  
24 was. So, that doesn't concern us at all.

25 **Sandra Smith:** Thank you.

26 **Mary Quillen:** Thank you. I appreciate that.

27 **Sandra Smith:** That was just...

1 **Mary Quillen:** Right, right.

2 **Sandra Smith:** ...how it came about so, what she is an executor of his will right now, and...

3 **Mary Quillen:** But that doesn't involve us, is what I am saying, at this point. So that's fine. We  
4 don't have to have any other information right now.

5 **Sandra Smith:** I have in my hands, Mr. Galumbeck does appear to know what he is doing, but I  
6 do have the docket where he did file, before the court, for judgement against dad, and as far as  
7 the collection and everything, I don't know how this fall about. Why it was never collected prior  
8 to now, but verses handing it out to, or disbursing it out to another individual that doesn't have a  
9 right to it, where mother has claim to it. That's where we are.

10 **Mary Quillen:** Right. That doesn't concern us as a Board, is what I'm saying, right at this point.  
11 Thank you.

12 **Butch Lambert:** So, ladies, as just stated, we really can't resolve issue with the heirs and who is  
13 to be paid, but the solution that Mr. Swartz offered is a solution that this Board can work with,  
14 and that's that we can revise our order and disburse all the other parties except for you and we  
15 will hold your funds until either we get a court order to disburse the funds, then we can certainly  
16 do that, under a court order.

17 **Sandra Smith:** Okay, and is that, I may have misunderstood Mr. Galumbeck. That sounds fine.  
18 Could it not be disbursed to the court to determine when they go to the court?

19 **Paul Kugelman, Jr.:** If we order...

20 **Sandra Smith:** You understand what I'm saying?

21 **Paul Kugelman, Jr.:** Yes, Ma'am. I'm council for the Board and for DMME, and we can't  
22 release, the Board cannot, or I will tell the Board they're not authorized to release the funds to  
23 any particular person under the circumstances.

24 **Donnie Rife:** Because we...

25 **Mark Swartz:** Except for Walter Keen.

26 **Paul Kugelman, Jr.:** For just with Walter Keen. Thank you for making that, yeah, that's a fine  
27 point to put on it.

28 **Sandra Keen:** Clarification. Okay.

29 **Paul Kugelman, Jr.:** I'm just telling you about this issue. I was talking about the broader agenda  
30 item, but thank you for clarifying that, Mr. Swartz. Because right now, we don't know who the  
31 money belongs to. We don't.

1 **Sandra Smith:** Right. And I understand that.

2 **Paul Kugelman, Jr.:** And this Board does not have the authority to make that determination.

3 **Sandra Smith:** Okay.

4 **Paul Kugelman, Jr.:** And we don't want to give the money to...

5 **Sandra Smith:** So you're going to continue with the money in...

6 **Paul Kugelman, Jr.:** It's going to stay where it is right now.

7 **Sandra Smith:** Until the judge...

8 **Donnie Rife:** Until we get a ruling.

9 **Paul Kugelman, Jr.:** It's going to stay where it is right now until either we get all the lawyers to  
10 come in and say we're going to pay it into a separate account to be held. It'll be out of our  
11 account, rather the escrow account, out of the CBM escrow account, into another account, where  
12 it can stay until the litigation is resolved, or it can stay in the CBM account until the litigation is  
13 resolved. Does that sound...?

14 **Mark Swartz:** We have two observations: one, Sarah Jane Keen actually gets a disbursement  
15 and that needs to move forward. If she was one of the people that was going to receive...

16 **Paul Kugelman, Jr.:** She has her own separate interest.

17 **Mark Swartz:** Under Table 1, she was going to get a disbursement.

18 **Paul Kugelman, Jr.:** Okay, that's fine.

19 **Mark Swartz:** So, she's going to get that money. The Walter Keen money, the fellow who died,  
20 that money needs to stay in escrow.

21 **Paul Kugelman, Jr.:** Right.

22 **Mark Swartz:** In terms of paying it in the court, the Board would need a court order from a  
23 court, saying do it. They're not going to start a an interparty action. You know, so, and the  
24 lawyer talked to me about that and I told him it's not going to help.

25 **Paul Kugelman, Jr.:** Thank you.

26 **Mark Swartz:** Well, so, but my recommendation is allow her to be paid in accordance with your  
27 original order; lets modify the paperwork so that the Walter Keen money stays in escrow; and  
28 we'll see what happens with the estate.

1 **Mary Quillen:** Just to clarify on that. This that we are disbursing, she has an account, an  
2 individual, personal...

3 **Mark Swartz:** She has her own interest, independent of Mr. Keen.

4 **Mary Quillen:** The only thing that we are going to be paying would be what is into that  
5 individual account?

6 **Mark Swartz:** Right.

7 **Mary Quillen:** Okay.

8 **Mark Swartz:** And Anita makes another point which I think was implicit with, and there are a  
9 couple other people that get paid and we want them to be paid too. It's just the Walter Keen  
10 money from a different tract that we want to hold.

11 **Donnie Rife:** That's the only thing up for judgement right now.

12 **Mary Quillen:** Right.

13 **Bruce Prather:** Why haven't these people been paid in the past, if they have a right to it?

14 **Donnie Rife:** I guess they have been paid in the past.

15 **Mark Swartz:** I would have to go back and look at the, but it may be the House Bill was, I  
16 mean, I don't know. I would have to go back and look at that.

17 **Anita Duty:** Originally, Number 1, Shea Cook represents these people that are here so we had  
18 some trouble getting affidavits, W-9's, things like that. Then, in addition to that, we were  
19 notified by Ms. Keen that there was an issue with settlement, things like that. So, we notified Mr.  
20 Cooper. Mr. Cooper put it on hold but now, since then, Mr. Keen has passed away. So there was  
21 like a whole, several things that contributed to it not being paid.

22 **Mary Quillen:** Thank you. That clarifies it.

23 **Anita Duty:** I think that's why he put it on the docket. So he can resolve it.

24 **Mary Quillen:** That clarifies it. Thank you.

25 **Butch Lambert:** Do we have a motion?

26 **Donnie Ratliff:** I make a motion that on Docket Item 18 and 19 that we make sure Ms. Keen's  
27 paid.

28 **Anita Duty:** All parties except for her.

1 **Donnie Ratliff:** We'll do two motions. We'll do this one first. The first one's just to make sure  
2 that everybody understands that on Table 1, that Ms. Keen will be paid. Make that a formal  
3 motion.

4 **Donnie Rife:** I'll second that, Mr. Chair.

5 **Butch Lambert:** I have a motion and a second. Any further discussion? [No response] All in  
6 favor, signify by saying yes.

7 **Board:** Yes.

8 **Donnie Ratliff:** Second motion. Concerning Docket Item 18 and 19, would pay everyone in  
9 Table 1, except Walter Keen. We would remove him and that money would stay in escrow until  
10 litigation tells us what to do.

11 **Mary Quillen:** Second.

12 **Butch Lambert:** I have a motion and a second. Any further discussion? [No response] All in  
13 favor, signify by saying yes.

14 **Board:** Yes.

15 **Butch Lambert:** Opposed, no? [No response] Thank you, folks.

16 **Donnie Rife:** Thank you, guys, for coming in.

17 **Rick Cooper:** Mr. Chairman, I would just like to add, that is that when they revise their petition  
18 for us to do that, revise their table and their E and EE, for us to do that.

19 **Butch Lambert:** Right. I think that was the motion.

20 **Rick Cooper:** Okay.

21 **Item Number 17**

22 **Butch Lambert:** Mr. Swartz, since we're jumping around, we have Mr. Joyce in the audience  
23 so he won't have to wait the rest of the day, could we call 17?

24 **Mark Swartz:** We'll do 17. Y47. Okay, we can do that.

25 **Butch Lambert:** A petition from CNX Gas Company, LLC, for pooling under Oakwood  
26 Coalbed Methane Gas Field I, for Unit Y47. This is Docket Number VGOB 16-0920-4098. All  
27 parties wishing to testify, please come forward.

28 **Donald Joyce:** Do you need me to repeat my name?



1 **Butch Lambert:** No, you're fine. I'm going to have to swear you in.

2 **Donald Joyce:** Okay.

3 **Sarah Gilmer:** Do you swear and affirm your testimony is the truth, the whole truth, and nothing  
4 but the truth?

5 **Donald Joyce:** Yes, ma'am.

6 **Butch Lambert:** You may proceed, Mr. Joyce.

7 **Donald Joyce:** My relief is quite simple. I wish to be removed from the forced pooling since I'm  
8 in the middle of negotiations with CNX.

9 **Butch Lambert:** Mr. Swartz or Ms. Duty, can you give us a little bit of background?

10 **Donald Joyce:** I also need to remove my brother, also. I'm speaking for him. He had to work.

11 **Paul Kugelman, Jr.:** No, sir. You cannot. Are you a lawyer licensed to practice in Virginia?

12 **Donald Joyce:** Well, considering the quality of some of them, yeah. I'm just kidding. No, I'm  
13 not.

14 **Paul Kugelman, Jr.:** Alright, so you cannot represent anybody's interests here but your own.

15 **Donald Joyce:** Okay.

16 **Butch Lambert:** Ms. Duty, do you have any background on what's going on here by the  
17 negotiations?

18 **Anita Duty:** I mean, according to what we received from our Lien Department, it look like a  
19 lease was offered, and I don't know if you were part of some of those meetings. Did you come to  
20 the office and have meetings?

21 **Donald Joyce:** No. I work in Pennsylvania.

22 **Anita Duty:** Okay.

23 **Donald Joyce:** It's all been by phone.

24 **Anita Duty:** I guess maybe he could elaborate on negotiations because, as far as what our Land  
25 Department is telling us is that he wasn't interested. So.

26 **Donald Joyce:** Incorrect. Just the other day I talked with Darren Whitt on the cell phone. He  
27 offered me \$200 an acre. I told him that was not enough. Before then, I called CNX in the  
28 Pennsylvania out of the Indiana Office. Talked to Kyle, bear with me on the spelling. It's

1 pronounced Ciliente. He said that they do not handle the CNX operations in Virginia. I ask him  
2 what their standard agreement was in Pennsylvania, offhand, you know, what they would first  
3 offer me. Their standard offer is \$2,000 an acre; 15% royalty. And there no royalty offer if  
4 \$4,000 an acre. No royalty. I talked to Darren Whitt later on and told him I was interested in  
5 negotiating and he wasn't used to no royalty agreement. He had talked to somebody else. He  
6 called me. We played voice mail thing. Finally got in touch with him and he offered \$200 an  
7 acre. According to their reserves, their reserves are 125-550 million cubic feet of reserves. I went  
8 off of a mid-estimate of 212 million cubic feet per 80 acre unit; comes down to 2.65 million  
9 cubic feet, mid-estimate. City [Indiscernible 49:10] price is, as of June, was \$6.42 per 1,000  
10 cubic feet. Going off that assumption, that's the whole-sale price, that's \$17,053 per acre. I  
11 thought \$1,000 per acre was a reasonable offer, which is far below 12.5% required by Virginia  
12 on a forced pooling. So, I wish that tract be removed from forced pooling. That is my purpose.

13 **Mark Swartz:** I'd like to make a call. We have a lot of hearsay here. Anita is going to call the  
14 land agent and see if he says any of this happened. If he says it did, we'll talk about it. If he says  
15 it didn't, you know, we can't pull a tract out of forced pooling.

16 **Donald Joyce:** I am making forced pooling to force someone be totally, totally unreasonable.  
17 I'm being reasonable.

18 **Mark Swartz:** Well, you say you're being reasonable. I want to know what our guy said. Anita  
19 was not part of the conversation; she's going to call and ask him and we can take a short break.

20 **Donnie Ratliff:** The only problem you've got is, the price that he's quoting there is for  
21 Marcellus.

22 **Mark Swartz:** I understand, so we need to talk to our guy.

23 **Donnie Ratliff:** And there's no Marcellus here so you can use that price.

24 **Donald Joyce:** I also went half the price.

25 **Mary Quillen:** That's not...

26 **Donnie Rife:** That's not the current.

27 **Mary Quillen:** No.

28 **Paul Kugelman, Jr.:** Counsel's calling a time out here, folks. It's not appropriate for us to  
29 determine whether the negotiations are appropriate or fair. This is not what this Board does.

30 **Donald Joyce:** I understand that, but my...

31 **Paul Kugelman, Jr.:** Sir! If there's some additional evidence that needs to be gathered and we  
32 need to take a break, that's up to the Board to decide. If you guys can come together, that's fine.

1 But as I look at 361.21, if there's no agreement as to whether the interest should be pooled, the  
2 Board has the authority to force pool. That's it.

3 **Donald Joyce:** But, the purpose of the law of a forced pool, is if the party is being irresponsible,  
4 just difficult, don't want to deal with it.

5 **Paul Kugelman, Jr.:** The plain text of the statute, sir, is that if there is no agreement to a pool,  
6 the Board has the authority to force pool. It's a shale pool. So there's even an argument to be  
7 made that the general assembly's intent here was, if there is no agreement then there will be a  
8 forced pool.

9 **Donald Joyce:** But I've already began and they're not, I mean, my argument is, I am in process.  
10 I have just began processing. You're talking about relieving me of my property, forcefully,  
11 without giving, in other words, I am negotiating fairly and I do not believe I should be forced  
12 pooled when I am in the process. At the very least, the relief I should accept is the delay of the  
13 forced pooling, so that the process can proceed as we can negotiate.

14 **Paul Kugelman, Jr.:** That's a different question and I believe, I guess you need to talk to CNX  
15 to see if...

16 **Mark Swartz:** Jamie is going to make the call while we proceed with the hearing.

17 **Donald Joyce:** I wish I could give you exact dates that I talked with the gentleman. It was  
18 always on the cell phone or in the car.

19 **Paul Kugelman, Jr.:** It's really not germane and I'm not trying to be. I understand this is a really  
20 strange place to be and I remember when I took over as the lawyer for the Gas and Oil Board, I  
21 was sort of amazed at the authority at, or the amount of authority that, you know, companies  
22 have to be able to develop energy, but the United States policy and the policy of the  
23 Commonwealth of Virginia, is to develop energy, so you have an opportunity to reach an  
24 agreement. It sounds like, based on the fact that CNX has petitioned, they believe that there's not  
25 going to be any agreement, and as far as I know, they want to go forward with the petition. It's  
26 going to be up to the Board to decide how to handle your statement that it's under process and  
27 that you'd like more time. That's a policy decision to make, but if there is no agreement and  
28 CNX wants to go forward, the Board's going to have to make the call. But, you cannot be  
29 accepted from it and you cannot stop the forced pool by objection. That's why it's called a forced  
30 pool.

31 **Donald Joyce:** Well, my interpretation is forced pool, through my research, is if you had 10  
32 people that wanted to go ahead with the well and one person did not to, that is to force that one  
33 individual to keep from stopping the whole show.

34 **Paul Kugelman, Jr.:** [Over talk] it could be one person wants to go forward and nine don't. The  
35 way the laws written, it still goes forward. It's not a majority rules. It's a statute.

1 **Donald Joyce:** I understand that, but that was the theory of the forced pooling was to keep  
2 somebody from stopping things from going forward. But like I said, my purpose is, my argument  
3 is, I am actually trying to make an agreement.

4 **Paul Kugelman, Jr.:** I understand what you're saying and I appreciate what you're saying, and I  
5 respect where you are coming from. I can understand that it's frustrating. You're right, but  
6 you're misstating the purpose just a little bit. The purpose really is to develop the energy. That's  
7 why they have the forced pool provision. It's written in such a way that, if everybody's not in  
8 agreement, it goes forward. It's not a majority rule; it's not a 25% rule; the Board's directed to  
9 force pool if there's not a unity of interest. Do I have that wrong, Mr. Swartz?

10 **Mark Swartz:** No.

11 **Paul Kugelman, Jr.:** Find anything out, Ms. Duty?

12 **Mark Swartz:** Jan is calling. Just to...

13 **Butch Lambert:** It's 10 o'clock. Let's just go ahead and take a break.

14 **Mark Swartz:** We have standard lease terms that we offer. Okay. Period. That doesn't mean that  
15 we don't negotiate with people. We'd rather have a lease and so we're just trying to find out if  
16 there were negotiations with the substance with this gentleman just as a matter of curiosity  
17 because he's telling us. So that's why we're making the call.

18 **Paul Kugelman, Jr.:** That's appropriate.

19 **Butch Lambert:** We're going to take a 10 minute recess and we'll come back together at about  
20 ten after.

21 **Butch Lambert:** Okay, ladies and gentlemen, we'll resume our hearing this morning continuing  
22 on with Docket Item 17. Ms. Duty, was you able to confirm or not, if there was negotiations?

23 **Mark Swartz:** Actually, I was able to confirm that there was negotiations. Our Lien Department  
24 contacted him with regard to a lease. His answer was, he did not want to lease, he wanted to sell  
25 and we negotiated and our last offer was we would purchase his interest for \$200 an acre and that  
26 was unacceptable to him. So, that's where we were. I got the impression when I was listening to  
27 him that he was suggesting that we offer to pay a \$200 an acre bonus and it was actually \$200 an  
28 acre to purchase his interest; our last offer, which was not acceptable to him.

29 **Paul Kugelman, Jr.:** So the offer was rejected then?

30 **Mark Swartz:** Correct. And it wasn't...he refused to lease. He wasn't interested in a lease, so he  
31 didn't pursue a lease. He wanted to sell and our offer to buy was \$200 an acre.

32 **Donald Joyce:** My counter offer was \$1,000 per acre; sell the gas; coalbed methane. He said "I  
33 don't know, I'll have to contact [Inaudible].

1 **Paul Kugelman, Jr.:** How long ago was that?

2 **Donald Joyce:** September...I just checked my cell phone today...that was September 14<sup>th</sup>.

3 **Paul Kugelman, Jr.:** Was that six days ago or a year and six days ago?

4 **Donald Joyce:** Of 2016.

5 **Mark Swartz:** We don't have an agreement.

6 **Paul Kugelman, Jr.:** Has there been a formal response or are you just telling us now that CNX  
7 is not going to.

8 **Mark Swartz:** We're not going to pay \$1,000 an acre.

9 **Butch Lambert:** Let me put this on the table, just for discussion. If either party don't want to do  
10 this, then the Board has no choice than to move forward, and I would put on the table that,  
11 maybe we continue this for 30 days just keep it open for Mr. Joyce. Maybe for any other  
12 negotiations [Inaudible]. If that's not acceptable by either party then the Board has no choice but  
13 to move forward.

14 **Mark Swartz:** If he wants to continue to negotiate, that's totally fine with us. We will, we're not  
15 going to pay \$1,000. That's all I can say today, okay? If he wants to make some other proposal,  
16 he's welcome to contact the Land Department, he has their numbers. If they can reach an  
17 agreement, we'll have an agreement with him and we'll dismiss him, but we're in the process of  
18 trying to get this well permitted; these two wells, actually; we would like to move forward with  
19 that, so, we would like to proceed today, if we can. That doesn't mean they can't continue to  
20 talk, if he want to come off the \$1,000.

21 **Butch Lambert:** Mr. Prather?

22 **Bruce Prather:** How much acreage are we talking about?

23 **Mark Swartz:** He has 2/3 of...how many acres?

24 **Anita Duty:** 3.82.

25 **Donald Joyce:** I believe this is a 92 acre tract, according to Mr. Williams...Mr. Whitt. I'm sorry.

26 **Bruce Prather:** 92 acres?

27 **Donald Joyce:** 93. And my brother is also, he's in on it also.

28 **Mark Swartz:** It's about 20 acres and he has 2/3 of it, so, roughly 13 acres is his interest in this  
29 unit.

30 **Butch Lambert:** About 20 acres in the tract?

1 **Anita Duty:** 2/3.

2 **Mark Swartz:** 2/3 in a total of 20 acres. Correct?

3 **Anita Duty:** Right.

4 **Mark Swartz:** Cause he has a relative who has the other 1/3.

5 **Butch Lambert:** Mr. Joyce has said he owned about 90 acres?

6 **Donald Joyce:** 93 but according to Jerry, he said, I was talking about our land, not just this unit.

7 **Butch Lambert:** Yeah, but 20 acres is...

8 **Mark Swartz:** In the tract, it's 19.983. In the unit, I mean.

9 **Paul Kugelman, Jr.:** So he has 2/3 of the, approximately 20 acre tract?

10 **Donald Joyce:** Uh, my calculations is like...

11 **Paul Kugelman, Jr.:** Well, ya'll can't even figure out how much, nobody can even figure out  
12 who owns what. So I don't know how you're going to resolve this.

13 **Mark Swartz:** No. I think we're in agreement. No, they have a 90 acre tract and 20 acres of that  
14 tract are in this unit. I don't think there's an argument.

15 **Paul Kugelman, Jr.:** Oh, okay.

16 **Anita Duty:** The entire acreage is not in the unit.

17 **Donald Joyce:** I've done the math. There's a total, little pieces of well snips. The land was  
18 originally two or three different tracts. You know, I done the math earlier. It's 37% of the tract  
19 we own... my brother, myself, and my dad; 37 percent.

20 **Mark Swartz:** On an 80-acre unit, there would 25%, so.

21 **Donald Joyce:** I don't know of another well unit effecting this. I'm not sure.

22 **Mary Quillen:** But you can only, Mr. Chairman, you can only speak for yours.

23 **Donald Joyce:** I understand.

24 **Mary Quillen:** And that's what we need is yours, because you can't speak for these other people  
25 unless you're an attorney.

26 **Donald Joyce:** I understand that. I'm just putting on notice.

27 **Mary Quillen:** We just need to know yours. This is what we're dealing with, is what yours is.

1 **Donald Joyce:** We own shares. We're not, you own this piece, he owns this piece, for, you  
2 know.

3 **Donnie Rife:** There's not anything that we would rather do than be able to give you your money,  
4 believe me.

5 **Donald Joyce:** I'm just wanting not to be forced before I can complete the negotiations or just  
6 drop it. That's all I'm asking.

7 **Donnie Rife:** I don't think you've got a choice on that. It'll go into escrow and then they'll.

8 **Paul Kugelman, Jr.:** No, there's no ownership issue here. There's nothing going into escrow.  
9 He just doesn't want to be force pooled.

10 **Donnie Rife:** I don't think you have a choice on that, sir. I'm sorry.

11 **Anita Duty:** We can always dismiss him from the pool.

12 **Mark Swartz:** If we reach an agreement.

13 **Anita Duty:** You're not treated any different because you're force pooled. The only thing is, if  
14 you want to sell your interest, that's something different. We can always dismiss.

15 **Donald Joyce:** Well, the thing is, if I am force pooled, I am responsible for 125% of the cost  
16 share of the well.

17 **Anita Duty:** No, you're not.

18 **Donnie Rife:** No, you are not.

19 **Anita Duty:** That's only if you want to become a carried operator or a participating operator.  
20 You don't...

21 **Donald Joyce:** I misunderstand.

22 **Anita Duty:** You don't get that option is you don't sell or if you don't lease.

23 **Mark Swartz:** [Over talk] Don't sell.

24 **Donnie Rife:** If I had property in the Marcellus, I sure would want to be.

25 **Donald Joyce:** Marcellus, according to U.S.G.S., is underneath us.

26 **Donnie Ratliff:** There's none done here.

27 **Donnie Rife:** None.

28 **Mary Quillen:** No, we don't deal with that here in Virginia.

1 **Donnie Ratliff:** You've got to get over in Bluefield before you go back into Marcellus.

2 **Butch Lambert:** Okay, we need to take action so I'll need a motion. Oh no, Mark's not finished.  
3 We need to go into [Inaudible]

4 **Mark Swartz:** I was thinking great. We're really moving now.

5 **Butch Lambert:** Thank you, Mr. Ratliff.

6 **Mark Swartz:** This is sweet! Okay, didn't quite work out but I wasn't going to argue with you.  
7 Alright. Anita, would you state your name for us, please?

8 **Anita Duty:** Anita Duty.

9 **Mark Swartz:** Who do you work for?

10 **Anita Duty:** CNX Land, LLC.

11 **Mark Swartz:** And are you here on behalf of the applicant today?

12 **Anita Duty:** Yes.

13 **Mark Swartz:** And is this a pooling application?

14 **Anita Duty:** It is.

15 **Mark Swartz:** Okay, and it pertains to what unit?

16 **Anita Duty:** Y47.

17 **Mark Swartz:** Sorry. What unit are we talking out?

18 **Anita Duty:** Y47.

19 **Mark Swartz:** Y. Okay. Sorry. And is that unit in the Oakwood Field?

20 **Anita Duty:** It is.

21 **Mark Swartz:** And how many acres are in the unit?

22 **Anita Duty:** 80.

23 **Mark Swartz:** Okay, and who is the applicant?

24 **Anita Duty:** CNX Gas Company.

25 **Mark Swartz:** And is that a limited liability company?

26 **Anita Duty:** Yes.



1 **Mark Swartz:** Is it authorized, is it licensed in Virginia and authorized to do business in  
2 Virginia?

3 **Anita Duty:** Yes.

4 **Mark Swartz:** Has the applicant registered with the DMME and the DGO?

5 **Anita Duty:** Yes.

6 **Mark Swartz:** Does it have a blanket bond on file, with regard to its oil and gas operation?

7 **Anita Duty:** Yes.

8 **Mark Swartz:** Have you provided a notice to the people you're seeking to pool today, that there  
9 would be a hearing today?

10 **Anita Duty:** Yes.

11 **Mark Swartz:** And how did you do that?

12 **Anita Duty:** We mailed, by certified mail, return receipt requested, on August 19, 2016.  
13 Published the notice and location map in the Bluefield Daily Telegraph on August 24, 2016.

14 **Mark Swartz:** Okay, and have you attached your certificates, with regard to mailing and with  
15 regard to publication?

16 **Anita Duty:** Yes.

17 **Mark Swartz:** And have you filed that or uploaded that into the e-file system?

18 **Anita Duty:** Yes.

19 **Mark Swartz:** With regard to the notice here in E47, if you go to that, it looks like we have, it's  
20 at page 34 of 42 in pdf, at least the one I have. It looks like we have, we mailed to Tyler Kent  
21 Richardson and he moved and left no address and we mailed to Francis Rose Webb and she had  
22 an insufficient address. Everybody else received their mail but we have also published, correct?

23 **Anita Duty:** We have.

24 **Mark Swartz:** Okay, so we have publication notice for those?

25 **Anita Duty:** Yes.

26 **Mark Swartz:** And then, in addition, because rather than come back to this, I will just address it  
27 now; because of the code, we need to, although we don't need to necessarily pool coal owners  
28 like we used to do, we are giving them notice under the new law so that they have an opportunity  
29 to come forward and claim an interest in this unit, correct?

1 **Anita Duty:** Correct.

2 **Mark Swartz:** And so, we've also provided certification of our notices to the coal owners?

3 **Anita Duty:** Yes.

4 **Mark Swartz:** And, with regard to the coal owners in this particular unit, they either signed for  
5 their mail or in one instance, it was hand delivered, so we've provided notice to all of them?

6 **Anita Duty:** Yes.

7 **Mark Swartz:** And while we're on that topic, did any of them come forward either with an  
8 agreement or with evidence that they had commenced proceedings to vindicate an interest?

9 **Anita Duty:** No.

10 **Mark Swartz:** Okay, so they can all be dismissed based on notice, the passage of 45 days?

11 **Anita Duty:** Yes.

12 **Mark Swartz:** Okay, let's go back to the beginning. Have you listed all of the persons that you  
13 are seeking to pool in Paragraph 7 of the notice and in your application?

14 **Anita Duty:** Yes.

15 **Mark Swartz:** Do you want to add or dismiss any people from that list?

16 **Anita Duty:** Well, we were able to lease Barbara Baxter but we have loaded those...

17 **Mark Swartz:** Already. So they should be reflective.

18 **Anita Duty:** ...into the system. I don't know if it came through or not.

19 **Mark Swartz:** I think the B2, at least when I pulled it off the website, the B2, the dismissal came  
20 through.

21 **Anita Duty:** It did? Okay.

22 **Mark Swartz:** I think that's already reflective in your paperwork.

23 **Anita Duty:** Okay.

24 **Mark Swartz:** And the dismissal there was because we had leased her subsequent to filing these.  
25 As far as you know, we have a lease, right?

26 **Anita Duty:** That's what I'm being told.

27 **Mark Swartz:** Okay.

1 **Anita Duty:** It's an old lease.

2 **Paul Kugelman, Jr.:** Is it still effective?

3 **Anita Duty:** Yes.

4 **Rick Cooper:** That is them right there.

5 **Butch Lambert:** They may come up and testify.

6 **Anita Duty:** We had dismissed her pooling because we say we have a lease, so I don't know if  
7 she disagrees.

8 **Butch Lambert:** Barbara Baxter, could you come up please?

9 **Barbara Baxter:** I guess so.

10 **Donnie Rife:** Sometimes you're better off like that.

11 **Butch Lambert:** Mr. Joyce, you can stay too cause we'll need to ask you some more questions.  
12 Ms. Baxter, could you state your name for the record, please?

13 **Barbara Baxter:** Barbara Baxter. I live in Cedar Bluff, Virginia.

14 **Sarah Gilmer:** Ms. Baxter, do you swear and affirm your testimony is the truth, the whole truth,  
15 and nothing but the truth?

16 **Barbara Baxter:** I do.

17 **Butch Lambert:** Ms. Baxter, the testimony is that they, that CNX has signed a lease with you?

18 **Barbara Baxter:** No.

19 **Anita Duty:** It looks like it's an older lease that would have been with Scott Hodges, like several  
20 years ago.

21 **Barbara Baxter:** Who's Scott Hodges?

22 **Anita Duty:** A Landman that we had.

23 **Mark Swartz:** For many years. Probably left 5-6 years ago. If not more.

24 **Barbara Baxter:** This property was left to me by my mother and the lease, I mean the property,  
25 the deed and everything, really, I didn't even know where the property was until I got this and  
26 then when it comes to pooling and it said "if you have no disagreements, come to the hearing",  
27 and I'm here and I really don't know.

1 **Butch Lambert:** Ma'am, could you come up to and be sworn if you're going to provide  
2 information for this? Keep moving you around, don't we, Mr. Swartz?

3 **Donnie Rife:** Do you know who Scott Hodges is?

4 **Rick Cooper:** Swear her in.

5 **Sarah Gilmer:** What is your name, Ma'am?

6 **Billy Ann Trent:** Billy Ann Trent.

7 **Sarah Gilmer:** Ms. Trent, do you swear and affirm that your testimony is the truth, the whole  
8 truth, and nothing but the truth?

9 **Billy Ann Trent:** Yes.

10 **Butch Lambert:** And you're part owner of this?

11 **Billy Ann Trent:** Yes. It was in my mother's name and we're the two heirs to that property.

12 **Butch Lambert:** As far as you know, there is no lease?

13 **Billy Ann Trent:** No.

14 **Donnie Rife:** And you don't know a Scott Hodges either then?

15 **Billy Ann Trent:** No.

16 **Mary Quillen:** How long ago did your mother pass away?

17 **Billy Ann Trent:** 2005.

18 **Mary Quillen:** 2005?

19 **Bruce Prather:** If it was a 10- year lease, it's expired.

20 **Mary Quillen:** Yeah. Could she have had a lease?

21 **Billy Ann Trent:** No, because Barbara lived with her and I did all of her...

22 **Barbara Baxter:** I took care of her until she died and she did the financial.

23 **Bruce Prather:** On CNX's lease, did Bill have who the adjoining property owners are? That  
24 would go a long ways in determining whether or not they've got your property. It would be on  
25 that lease as to who the neighbors are.

26 **Billy Ann Trent:** The way you have listed here, I think would be the neighbors to that property.

27 **Donnie Ratliff:** Mr. Chairman?

1 **Butch Lambert:** Mr. Ratliff?

2 **Donnie Ratliff:** I make a motion we continue this until we get all of this straightened out. Too  
3 many crutches.

4 **Donnie Rife:** We're going to have to have some court direction.

5 **Butch Lambert:** Unless CNX can come up with a lease that's still valid.

6 **Donnie Rife:** Well, you can't do that if its over 10 years long.

7 **Bruce Prather:** It all depends on what the term is.

8 **Butch Lambert:** Do I have a motion to continue this docket item? Do I have a second?

9 **Donnie Rife:** Second, Mr. Chairman.

10 **Butch Lambert:** I have a second. Any further discussion and how long we want to continue for?

11 **Donnie Rife:** I'd like to get it done as soon as possible because I'm sure these people have a lot  
12 of questions that they need some answers to.

13 **Butch Lambert:** 30 days?

14 **Donnie Rife:** That would be plenty, Mr. Chairman?

15 **Butch Lambert:** I have a motion and I have a second to continue for 30 days. Any further  
16 discussion? [No response] All in favor, signify by saying yes.

17 **Board:** Yes.

18 **Butch Lambert:** Opposed, no? [No response] Mr. Swartz and Mr. Joyce, we're going to  
19 continue this for 30 days in order for them to work out maybe any further agreements that you  
20 might have and to see if they can locate.

21 **Mark Swartz:** We'll locate the lease and send them a copy of it.

22 **Donnie Rife:** We hate to run you guys back but right now we just don't have enough information  
23 to go forward with it.

24 **Barbara Baxter:** That's fine. Like I said. We came on the blind really, basically, and not  
25 knowing. So anything you can do would be great.

26 **Billy Ann Trent:** You really thought we would have receive something else besides this letter  
27 but we didn't.

28 **Donnie Rife:** Yeah. There's a lot of questions that you all need answers to and there's a lot of  
29 questions we need answers to. But as soon as we get them, we'll move forward.

1 **Billy Ann Trent:** That's wonderful. I appreciate it.

2 **Butch Lambert:** Thank you.

3 **Billy Ann Trent:** Thank you.

4 **Item Number 4**

5 **Butch Lambert:** A petition from CNX Gas Company, LLC, for (1) the disbursement of  
6 escrowed funds heretofore deposited with the Board's Escrow Agent, attributable to a portion of  
7 Tract 1B, as depicted upon the annexed table; and (2) authorization to begin paying royalties  
8 directly to the parties listed in the petition; (3) Dismissal of Coal Owner. This is Docket Number  
9 VGOB 90-1010-0032-10. All parties wishing to testify, please come forward.

10 **Mark Swartz:** Mark Swartz and Anita Duty.

11 **Butch Lambert:** You may proceed, Mr. Swartz.

12 **Mark Swartz:** Anita, state your name for us.

13 **Anita Duty:** Anita Duty.

14 **Mark Swartz:** Who do you work for?

15 **Anita Duty:** CNX Gas. CNX Land.

16 **Mark Swartz:** Okay, and you're here on behalf of CNX Gas, LLC, right?

17 **Anita Duty:** Yes.

18 **Mark Swartz:** And this is a petition for an order authorizing the disbursement of escrowed  
19 funds?

20 **Anita Duty:** Yes.

21 **Mark Swartz:** And in addition to that, it's a request to be allowed to pay the recipients of the  
22 disbursements, directly in the future and it's also a request to dismiss a coal owner or coal  
23 owners, right?

24 **Anita Duty:** Yes.

25 **Mark Swartz:** Pertain to AA8?

26 **Anita Duty:** Yes.

27 **Mark Swartz:** And the reason for the request is, essentially, the 36122 coal owners, correct?

28 **Anita Duty:** Yes.

1 **Mark Swartz:** And we are seeking to pay a sum of the people that are coal claimants and an  
2 entitlement to pay under the Virginia Code, correct?

3 **Anita Duty:** Yes.

4 **Mark Swartz:** And to that, we have also notified the coal owners and given them 45 days to  
5 advise the Board or the operator that they have, either an agreement or a proceeding pending,  
6 correct?

7 **Anita Duty:** Yes.

8 **Mark Swartz:** And is it true that none of the coal owners that we noticed have provided us with  
9 either an agreement or proof of a pending litigation?

10 **Anita Duty:** Yes.

11 **Mark Swartz:** Okay. And have you provided the Board with a Table 1 that they can give to the  
12 Escrow Agent, with regard to this disbursement?

13 **Anita Duty:** Yes.

14 **Mark Swartz:** And it pertains to Tract 1B?

15 **Anita Duty:** Yes.

16 **Mark Swartz:** And it sets forth in the second column to the right-hand side, the percentage that  
17 the Escrow Agent should use to make the disbursement for each person for who you have  
18 provided a name and an address. Correct?

19 **Anita Duty:** Yes.

20 **Mark Swartz:** And there are three people, three different percentages and that's who the Escrow  
21 Agent should pay and the percentages they should use?

22 **Anita Duty:** Yes.

23 **Mark Swartz:** Okay. With regard to going forward, have you provided a revised Exhibit E that  
24 reflects the situation if these people are disbursed?

25 **Anita Duty:** Yes.

26 **Mark Swartz:** And an EE which shows the pay status going forward?

27 **Anita Duty:** Yes.

1 **Mark Swartz:** And, have you provided notifications or proof, with regard to mailing. We have,  
2 of the three items of mail that were sent, Wanda Coleman received hers; Billy Ray Thacker, she  
3 received that one; and Bonnie Street, it came back as returned, correct?

4 **Anita Duty:** Yes.

5 **Mark Swartz:** Do you have a W9 from Bonnie?

6 **Anita Duty:** Yes.

7 **Mark Swartz:** If I leave it to the Board, in terms of what you're going to do with that. If you  
8 want to direct the Escrow Agent to pay her because we have a W9 or if you want to hold that,  
9 we'll modify the Exhibit if we have to. Whatever you prefer in that regard, we'll defer that for a  
10 moment. With regard to Exhibit J, did you do a reconciliation of the account?

11 **Anita Duty:** Yes.

12 **Mark Swartz:** And when you did that, did you look for a deposit for every payment that the  
13 operator made?

14 **Anita Duty:** Yes.

15 **Mark Swartz:** And were you able to find a deposit for every payment?

16 **Anita Duty:** Yes.

17 **Mark Swartz:** Okay, and when you compared the bank balance, it looks like the end of March  
18 of this year, and did your calculations, was there a difference?

19 **Anita Duty:** There's \$1,771.13 more in the account.

20 **Mark Swartz:** In what First Bank and Trust shows compared to what you show?

21 **Anita Duty:** Yes.

22 **Mark Swartz:** You did find one correction that was made of \$340.18 and you've noted that.  
23 Correct?

24 **Anita Duty:** Yes.

25 **Mark Swartz:** But other than having straightened that out, you cannot account for the \$1,771.13  
26 difference. Correct?

27 **Anita Duty:** Correct.

28 **Mark Swartz:** And this is the first, Mr. Cooper's office processing many, many requests that  
29 you don't see. You only see the ones that are a problem. So it's going to look today like every



1 one of these accounts is messed up. Well, that's because you see all the ones that are messed up.  
2 You never see any of the ones that aren't. Okay? So this is the first of a number of differences.  
3 Sometimes more, sometimes less, but I think you have a policy that Mr. Cooper's supposed to  
4 bring everything over \$500, I think, to your attention, so that's why this one is here. With regard  
5 to the coal owner, it looks like you provided notice to Harrison-Wyatt, correct?

6 **Anita Duty:** Yes.

7 **Mark Swartz:** And we're asking, in addition to the disbursements that you made direct pay,  
8 we're also asking that Harrison-Wyatt be dismissed from this unit as a coal owner?

9 **Anita Duty:** Yes.

10 **Mark Swartz:** That it.

11 **Bruce Prather:** Is this a partial payment of this escrow account or is this a total?

12 **Mark Swartz:** It's a partial. The way you can quickly tell, there is one here in this collection  
13 today. If our Exhibit E says the account can be closed, and there's one of those, the Exhibit E  
14 sort of answers that question, and here's there's a pretty extensive Exhibit E, so we're going to  
15 have escrow going forward. At least for some period of time.

16 **Butch Lambert:** Any others questions from the Board? [No response] Anything further Mr.  
17 Swartz?

18 **Mark Swartz:** Just for your purposes, the W9 address is the same that we mailed to them so  
19 we're just at a dead end there.

20 **Butch Lambert:** Okay. Anything further?

21 **Mark Swartz:** No.

22 **Butch Lambert:** Do I have a motion to proceed with the disbursement accepting the W9 as  
23 notification?

24 **Donnie Rife:** Motion made for approval to accept the W9 as notification, Mr. Chair.

25 **Donnie Ratliff:** Second.

26 **Butch Lambert:** I have a motion and I have a second. Any further discussion? [No response] All  
27 in favor, signify by saying yes.

28 **Board:** Yes.

29 **Butch Lambert:** Any opposed? [No response] Thank you, Mr. Swartz. That one is approved.

30 **Mark Swartz:** Thank you.

**Item Number 5**

**Butch Lambert:** A petition from CNX Gas Company, LLC, for (1) the disbursement of escrowed funds heretofore deposited with the Board's Escrow Agent, attributable to Tract 16B, as depicted upon the annexed table; and (2) the disbursement of escrowed funds heretofore deposited with the Board's Escrow Agent, attributable to previously disbursed Tract 6A, as depicted upon the annexed table; and (3) authorization to begin paying royalties directly to the parties listed in the petition; (4) Dismissal of Coal Owners. This is Docket Number VGOB 91-0716-0135-03. All parties wishing to testify, please come forward.

**Mark Swartz:** Mark Swartz and Anita Duty.

**Butch Lambert:** You may proceed, Mr. Swartz.

**Mark Swartz:** Anita, would you state your name for us again, please?

**Anita Duty:** Anita Duty.

**Mark Swartz:** And you're here on behalf of CNX Gas Company, LLC, correct?

**Anita Duty:** Yes.

**Mark Swartz:** And this is on petition for a disbursement for escrow pertaining to drilling unit BUN1?

**Anita Duty:** Yes.

**Mark Swartz:** And the reasons for the request are we have gas claimant now prevailing under the Virginia Code as amended; we have royalty split agreement accounting for some of the disbursement, correct?

**Anita Duty:** Yes.

**Mark Swartz:** If you go to your tables, we have a Table 1, which is an exact dollar amount. Correct?

**Anita Duty:** Yes.

**Mark Swartz:** And that directs the escrow agent to make two disbursements of \$34,244.24 to, one to Rockport Oil and Gas and the address is set forth there; and an additional disbursement of the same amount to CNX Gas Company, and there's an address there. Correct?

**Anita Duty:** Yes.

**Mark Swartz:** And the reason for the exact dollar disbursement is what?

1 **Anita Duty:** The tract should have been disbursed in a prior order and now we're going to  
2 correct it so we just need to make the one-time payment to correct escrow.

3 **Mark Swartz:** And Table 2, there is a payment, and that's a percentage payment, correct?

4 **Anita Duty:** Yes.

5 **Mark Swartz:** And that would need to occur after the Table 1 disbursements are made?

6 **Anita Duty:** Yes.

7 **Mark Swartz:** And that goes to Norfolk Southern and you've provided an address?

8 **Anita Duty:** Yes.

9 **Mark Swartz:** And Norfolk Southern is to get 8.8551% of the balance in the account at the time  
10 the disbursement is made. Correct?

11 **Anita Duty:** Yes.

12 **Mark Swartz:** You have provided an Exhibit E which shows a need for escrow going forward,  
13 correct?

14 **Anita Duty:** Yes.

15 **Mark Swartz:** A EE, which shows the pay status going forward?

16 **Anita Duty:** Yes.

17 **Mark Swartz:** And you have provided proofs, with regard to notice to the people receiving the  
18 disbursements and everybody got that. Correct?

19 **Anita Duty:** Yes.

20 **Mark Swartz:** Okay. And we have a reconciliation and when we get to the bottom line there, we  
21 have a, again, CNX is showing more than the April bank balance. Correct?

22 **Anita Duty:** I think it's less.

23 **Mark Swartz:** If you look, they've got \$300, you've got \$303.

24 **Anita Duty:** The bank has \$300.

25 **Mark Swartz:** Oh, you're saying...I'm sorry. I misspoke. So your calculations show that the  
26 bank should have \$2,881.12 more than they're reporting.

1 **Anita Duty:** Correct.

2 **Mark Swartz:** Sorry. When you went through the bank deposits and your list of payments that  
3 you had made as the operator, we're you able to find a deposit for every check?

4 **Anita Duty:** We were.

5 **Mark Swartz:** Do you have any explanation for the difference? Another one of those problem  
6 amounts. You mailed to coal owners?

7 **Anita Duty:** We did.

8 **Mark Swartz:** And you mailed a couple of times, correct?

9 **Anita Duty:** Yes.

10 **Mark Swartz:** And you have a certification of notice showing two mailings in 2015 and one in  
11 May 2016. Correct?

12 **Anita Duty:** Yes.

13 **Mark Swartz:** Did you receive back from any of the coal owners, in response to your 45-day  
14 notices that they had either reached an agreement that they wanted to rely on or have commenced  
15 to proceeding?

16 **Anita Duty:** No.

17 **Mark Swartz:** Under the circumstances then, they should all be dismissed?

18 **Anita Duty:** Yes.

19 **Mark Swartz:** Or determined to be dismissed. That's all I have on this one, Mr. Chairman.

20 **Butch Lambert:** Any questions from the Board?

21 **Donnie Ratliff:** Does this close the...Mr. Chairman? Does this close the escrow account?

22 **Mark Swartz:** It does not.

23 **Bruce Prather:** One question. On this Rockport Oil and Gas, did they have an Oil and Gas lease  
24 that expired on this property? Is that where their interest came in for the coal owners?

25 **Anita Duty:** It came through, there's several assignments from the coal owner. It originally  
26 started out with Hugh McRae Land Trust. They signed, well, it says assignment and bill of sale.  
27 All this is in the Exhibit. Then it goes to Torch, then Torch in 2011, then an assignment to the

1 investments; then in 2014, Torch signed an additional interest to Rockport Oil and Gas and  
2 Chisos Limited. So it's like, they just keep on conveying like an override.

3 **Mary Quillen:** So this is an old assignment, then?

4 **Anita Duty:** The assignments are new but the, like I said, the property was originally owned by  
5 [Indiscernible 33:37] Land Trust, the coal interest.

6 **Mary Quillen:** Yeah. Okay.

7 **Mark Swartz:** But this is a split agreement. The CNX/Rockport is a split agreement, so that's  
8 why coal is relevant.

9 **Mary Quillen:** Right.

10 **Mark Swartz:** Which is probably what caused you to ask that question.

11 **Mary Quillen:** Right.

12 **Butch Lambert:** Any other questions from the Board? Anything further, Mr. Swartz?

13 **Mark Swartz:** No.

14 **Butch Lambert:** Do I have a motion?

15 **Donnie Rife:** Motion made for approval, Mr. Chair.

16 **Mary Quillen:** Second.

17 **Butch Lambert:** I have a motion and second. Any further discussion? [No response] All in  
18 favor, signify by saying yes.

19 **Board:** Yes.

20 **Butch Lambert:** Opposed, no? [No response]

21 **Butch Lambert:** Thank you, Mr. Swartz. That is approved.

22 **Item Number 6**

23 **Butch Lambert:** There is listed an Anna R. Lambert, in the disbursements. The Chairman has no  
24 knowledge of Anna R. Lambert, but just to be on the safe side, I'm going to excuse myself and  
25 ask Mr. Ratliff if he will handle that one.

26 **Donnie Ratliff:** A petition from CNX Gas Company, LLC, for 1) the disbursement of escrowed  
27 funds heretofore deposited with the Board's Escrow Agent, attributable to Tracts 68, 68B, 68C,

1 74A, 75A, 75B, 77C, 77E, 78 & 79C, as depicted on the table; and (2) authorization to begin  
2 paying royalties directly to Coal Mountain Mining Company, and those listed. Docket Number  
3 VGOB 92-0421-0217-05. All parties interested, may proceed.

4 **Mark Swartz:** Mark Swartz and Anita Duty.

5 **Mark Swartz:** Anita, would you state your name for us again, please?

6 **Anita Duty:** Anita Duty.

7 **Mark Swartz:** You're here on behalf of CNX Gas Company, LLC?

8 **Anita Duty:** Yes.

9 **Mark Swartz:** With regard to a request to a disbursement from Drilling Unit SLW9?

10 **Anita Duty:** Yes.

11 **Mark Swartz:** And the relief we're seeking is, first of all, a disbursement as described in Table  
12 1; then an authorization to pay the folks receiving the disbursement directly in the future; and  
13 lastly, to resolve some coal owner claims by dismissal. Correct?

14 **Anita Duty:** Yes.

15 **Mark Swartz:** And the relief sought was caused by or the reasons for the relief is we have some  
16 royalty split agreements, correct?

17 **Anita Duty:** We do.

18 **Mark Swartz:** And in addition, we have some gas claimants who can be paid now under the  
19 Virginia Code, as amended, correct?

20 **Anita Duty:** Yes.

21 **Mark Swartz:** Alright, and in that regard, with regard to the gas claimants under the code, have  
22 you provided notice, 45-day notices to the coal owners?

23 **Anita Duty:** Yes.

24 **Mark Swartz:** Okay, we'll get to that in a moment. This looks like a panel unit. Right?

25 **Anita Duty:** Yes. It is.

26 **Mark Swartz:** And a pretty extensive Table 1. Correct?

27 **Anita Duty:** Yes.

1 **Mark Swartz:** And on Table 1, have you listed the various tracts that we're asking for a  
2 disbursement from?

3 **Anita Duty:** Yes.

4 **Mark Swartz:** And within each of those tracts, have you provided a name and provided an  
5 address for the person who should receive each disbursement within each of these tracts?

6 **Anita Duty:** Yes.

7 **Mark Swartz:** And in the second column from the right-hand side, have you given a percentage  
8 for each person?

9 **Anita Duty:** Yes.

10 **Mark Swartz:** And if the Board chooses to approve this, should the Board instruct the escrow  
11 agent to use the percentage for each person or company in the column, second from the right;  
12 apply that percentage to the balance on hand when the disbursement is being made; cut the check  
13 and mail it to each company or person identified by name and address?

14 **Anita Duty:** Yes.

15 **Mark Swartz:** And then going forward, do we request the ability to pay all those people  
16 directly?

17 **Anita Duty:** We do.

18 **Mark Swartz:** And then, have you provided the Board with a revised Exhibit E that shows that  
19 we need to continue to have an escrow account but that reflects a shorter list of people, because  
20 of the people we're paying.

21 **Anita Duty:** Yes.

22 **Mark Swartz:** And then an EE, which reflects the payments that is going forward, in the event  
23 this petition is approved?

24 **Anita Duty:** Yes.

25 **Mark Swartz:** Okay. Certification of notice and we have everybody signed for the mail except  
26 for two people; one, we have, looks like Ralph Douglas Keen, we have an unclaimed piece of  
27 mail. Correct?

28 **Anita Duty:** Ralph Keen is deceased.

1 **Mark Swartz:** And that's why it's unclaimed, I guess. Okay. And then the last person is Janet M  
2 Willett, we've got another in transit, which means the post office isn't telling us what happened.  
3 Correct?

4 **Anita Duty:** Yes.

5 **Mark Swartz:** Okay. With regard to those two persons on the notice and on Table 1, are you  
6 requesting permission to remove those from the payment status?

7 **Anita Duty:** Yes.

8 **Mark Swartz:** Okay. Then we've got an Exhibit J. With regard to that reconciliation, did you or  
9 someone on your behalf, go through all of the checks that the operator cut and try to locate a  
10 deposit?

11 **Anita Duty:** Yes

12 **Mark Swartz:** And were you able to do?

13 **Anita Duty:** Yes.

14 **Mark Swartz:** And in any event it looks like when you do your math and First Bank reports its  
15 May 2016 balance, there's a difference, correct?

16 **Anita Duty:** Yes.

17 **Mark Swartz:** And the bank shows several hundred dollars more than you do?

18 **Anita Duty:** They do.

19 **Mark Swartz:** And what amount, precisely?

20 **Anita Duty:** \$429.85.

21 **Mark Swartz:** [Pause] Just trying to figure out if we've already dismissed these coal owners,  
22 and that's what's going on here. It looks like we were here in January for disbursement that may  
23 not have processed yet, okay? And they would have been dismissed at that time. That's what I  
24 was looking for. Anita's found that order but we need to state that in this order. Remember the  
25 issue that we had with that? Okay, so we're good. Looks like the noticed them before the January  
26 hearing and that order hasn't been accounted for because it, apparently, hasn't been paid yet for  
27 some reason. I'm thinking.

28 **Anita Duty:** I think it has been paid.

29 **Mark Swartz:** Well, it didn't get on your accounting.



1 **Anita Duty:** I gotcha.

2 **Mark Swartz:** It just isn't on her accounting.

3 **Anita Duty:** We just didn't subtract that in the balance.

4 **Mark Swartz:** Okay. We're good on the coal owners. I just wanted to make sure we didn't miss  
5 something in there.

6 **Paul Kugelman, Jr.:** Just to make sure the records clear, the coal owners that may be subject to  
7 this petition, were on notice of disbursement of these tracts due to a prior petition?

8 **Mark Swartz:** In a prior petition and were dismissed at that time.

9 **Paul Kugelman, Jr.:** For the same tracts?

10 **Mark Swartz:** Correct.

11 **Paul Kugelman, Jr.:** Okay. Do we remember what that was, just for clarity of reference? And if  
12 not, I understand.

13 **Mark Swartz:** The January hearing, I can go back to it.

14 **Paul Kugelman, Jr.:** That's okay. I just thought you might have it off the top of your head, to  
15 make it easy if we had to go back in the record.

16 **Anita Duty:** [Over talk] disbursement, so it probably happened, maybe several disbursements  
17 ago. Or '05, I mean.

18 **Mark Swartz:** But the one, or you can just show them is January of this year.

19 **Anita Duty:** What the number is?

20 **Mark Swartz:** It was entered.

21 **Anita Duty:** Right. And it's the '04 order. It's the prior order.

22 **Mark Swartz:** Right, but the disbursement was made in January.

23 **Sarah Gilmer:** It was made out April.

24 **Anita Duty:** We just didn't put it on our Exhibit J. We just didn't show the total payout from the  
25 '04 disbursement on that Exhibit J.

26 **Mark Swartz:** To sort of flesh out...I'm not sure I've had this discussion with you. I certainly  
27 had it with Rick and Sarah. In the beginning, when we were making disbursements, we would

1 come in and we would file the petition that said we want a disbursement; we want to be able to  
2 pay these people directly; and we want you to dismiss coal owners. So you've seen this all. The  
3 form order on the E forms, that was in place at that point, because we're limited and so are they,  
4 what we can use, wouldn't dismiss the coal owners. So you would make a motion to dismiss the  
5 coal owners, as a Board, and you would vote on that and you would grant that motion, but then  
6 the order that the computer system would enter, would not dismiss the coal owners. Because it  
7 wasn't an option at that point. We have since gone in and they've got their programmers and  
8 square that away, so what's going to happen here is we will state in this order that that happened  
9 in January. I mean, we'll go back to that.

10 **Paul Kugelman, Jr.:** Is there any way to pull up a disbursement order, the prior disbursement  
11 order for these?

12 **Rick Cooper:** We've got it pulled up.

13 **Mark Swartz:** I've got it. We just looked at it.

14 **Paul Kugelman, Jr.:** Oh, okay. I'm sorry. When was it entered?

15 **Mark Swartz:** January, something. Anita's got it here. It was January...

16 **Paul Kugelman, Jr.:** And you say the order itself does not dismiss the coal owners?

17 **Mark Swartz:** Right. You guys did.

18 **Anita Duty:** The language doesn't. Where it's a form order; it was created by E-forms.

19 **Paul Kugelman, Jr.:** Right. Okay.

20 **Mark Swartz:** It was entered January 26<sup>th</sup>.

21 **Rick Cooper:** Paid out in April. Correct, Sarah?

22 **Sarah Gilmer:** It was paid out in April.

23 **Mark Swartz:** And then this order will then clean that up, but that's why we haven't noticed  
24 these people, because they were already dismissed.

25 **Paul Kugelman, Jr.:** Is there any way we can just make sure this order incorporates, or  
26 references, the order, the January order, so that we...

27 **Sarah Gilmer:** [Inaudible]

28 **Paul Kugelman, Jr.:** Okay. I just don't see those so I'm not exactly sure what's in them.

1 **Sarah Gilmer:** It was signed off on January 26<sup>th</sup>.

2 **Paul Kugelman, Jr.:** Yeah. Okay, do you have, since we're putting this on the record, do you  
3 have the Docket Number, the Order Number, or something so that it's in the transcript?

4 **Sarah Gilmer:** The Docket Number is 92-0421-0217-04.

5 **Paul Kugelman, Jr.:** Okay. Now we can just have it all in one place in the transcript. Thank  
6 you.

7 **Mark Swartz:** What we're trying to do, cause I'm not sure if, you know, if we are going to have  
8 to, I thought we had dealt with what those orders needed to say when this happens and I think we  
9 all have language for that, but we need to make sure when we draft those orders. Cause we have  
10 had this discussion months ago and were kind of waiting for this to happen to clean up the  
11 record. They apparently, have a solution which we've been following, but we needed to do that  
12 so we don't have to notice coal owners in the future that have been dismissed.

13 **Paul Kugelman, Jr.:** Right. We don't need duplicate notice for the same tracts.

14 **Mark Swartz:** Right.

15 **Paul Kugelman, Jr.:** As long as the interests are identical.

16 **Mark Swartz:** They are.

17 **Donnie Ratliff:** Anything else, Mr. Swartz?

18 **Mark Swartz:** No, I do not. Now that we've resolved that.

19 **Donnie Ratliff:** Any questions from the Board?

20 **Rick Cooper:** Mr. Chairman, I have one thing to add. So for clarity and for the record, Mr.  
21 Grady Horn, who is a public comment this morning, wanted to know where his money was. He  
22 is in this Docket Number here, and I had talked to him about that, so, he was curious as to where  
23 his money was so it's been heard today and I've talked to him. So we have resolved that issue  
24 that he mentioned earlier on the public comments.

25 **Paul Kugelman, Jr.:** And he has departed?

26 **Rick Cooper:** And he has departed, but he is aware it would be 60-90 days to receive his funds.

27 **Sarah Gilmer:** And the coal owner dismissal issue has been put on the order as an Item Number  
28 3.

29 **Donnie Ratliff:** Anything else from the Board? Do I have a motion?

1 **Donnie Rife:** Motion made for approval, Mr. Chair.

2 **Donnie Ratliff:** That motion would include taking out Ralph Douglas Keen and Janet Willett?

3 That would remove them?

4 **Donnie Rife:** Right.

5 **Donnie Ratliff:** Do I have a second?

6 **Mary Quillen:** Second.

7 **Donnie Ratliff:** All in favor?

8 **Board:** Yes.

9 **Donnie Ratliff:** Those opposed? [No response]

10 **Donnie Ratliff:** Motion carried.

11 **Item Number 7**

12 **Butch Lambert:** A petition from CNX Gas Company, LLC, for (1) the disbursement of

13 escrowed funds heretofore deposited with the Board's Escrow Agent, attributable to Tract 2, as

14 depicted upon the annexed table; and (2) authorization to begin paying royalties directly to the

15 parties listed in the petition; (3) Dismissal of Coal Owner(s). This is Docket Number VGOB 92-

16 0721-0234-01. All parties wishing to testify, please come forward.

17 **Mark Swartz:** Mark Swartz and Anita Duty.

18 **Butch Lambert:** You may proceed, Mr. Swartz.

19 **Mark Swartz:** Thank you. Anita, state your name for us again?

20 **Anita Duty:** Anita Duty.

21 **Mark Swartz:** You're here on behalf of CNX Gas Company, LLC, with regard to this?

22 **Anita Duty:** Yes.

23 **Mark Swartz:** And it's a request for disbursement to direct pay and dismissal of coal owners

24 pertaining to Unit Y20?

25 **Anita Duty:** Yes.

26 **Mark Swartz:** The reasons why we're here today are, we have some people who are gas

27 claimants under the Virginia Act and are now entitled to payment. Correct?

1    **Anita Duty:** Yes.

2    **Mark Swartz:** And we have given notice with the coal owners? Correct?

3    **Anita Duty:** We have.

4    **Mark Swartz:** And have you prepared a Table 1?

5    **Anita Duty:** Yes.

6    **Mark Swartz:** And on Table 1, have you identified the tract, which is Tract 2, and every person  
7    by name and addressed who is to receive a disbursement?

8    **Anita Duty:** Yes.

9    **Mark Swartz:** And for each person, have you given a percentage which in this instance, is  
10   identical for everybody?

11   **Anita Duty:** Yes.

12   **Mark Swartz:** That the escrow agent is to use to apply to the balance on hand at the time the  
13   checks are cut?

14   **Anita Duty:** Yes.

15   **Mark Swartz:** Are you asking for permission to pay these people directly in the future, if they  
16   receive these disbursements, or if these disbursements are paid?

17   **Anita Duty:** Yes.

18   **Mark Swartz:** And have you provided a revised Exhibit E, which shows the need for an escrow  
19   going forward, but obviously doesn't include the people we're paying?

20   **Anita Duty:** Yes.

21   **Mark Swartz:** And have you included a revised Exhibit EE, which shows the pay status of this  
22   unit, going forward?

23   **Anita Duty:** Yes.

24   **Mark Swartz:** Have you provided data, with regard to publication?

25   **Anita Duty:** Yes.

26   **Mark Swartz:** And here we're got everyone picked up their notice except the last person,  
27   Francis Hinchee-Sterans, correct?

1 **Anita Duty:** Correct.

2 **Mark Swartz:** Do you have a W9 from that person?

3 **Anita Duty:** We do.

4 **Mark Swartz:** What's the date of that?

5 **Anita Duty:** November.

6 **Mark Swartz:** 4<sup>th</sup> of 2015, so less than a year away. Did you do reconciliation, with regard to  
7 this account?

8 **Anita Duty:** We did.

9 **Mark Swartz:** Did you identify all of the checks that were paid to several escrow agents by the  
10 operator?

11 **Anita Duty:** We did.

12 **Mark Swartz:** And did you go look for a deposit?

13 **Anita Duty:** Yes.

14 **Mark Swartz:** And were you able to find all of the deposits?

15 **Anita Duty:** With the exception of one.

16 **Mark Swartz:** Okay, and which one was that?

17 **Anita Duty:** In April 1996, there was a deposit of \$273.63 on our side, but we didn't find any  
18 evidence it was deposited on the banks side.

19 **Mark Swartz:** In this account?

20 **Anita Duty:** Yes.

21 **Mark Swartz:** And then you also, there's an email exchange, before we get to that, when you  
22 compared your calculations of what CNX thought the total should be to the April 2016 First  
23 Bank and Trust balance, was there a difference?

24 **Anita Duty:** The bank still had \$622.11 more than our calculations.

25 **Mark Swartz:** Before we move on to some emails about that, at the moment, this is no longer  
26 being paid as a frack unit, but it's going into VP8 Seal Gob 1, right?

1 **Anita Duty:** It is.

2 **Mark Swartz:** Okay. And then moving on to some emails, it looks like you and the DGO have  
3 been back and forth, to some extent, trying to figure out what is causing the discrepancy, right?

4 **Anita Duty:** Yes.

5 **Mark Swartz:** And there's an email from you to Sarah, but I guess actually to Brad Boyd, and  
6 copied to Sarah, right?

7 **Anita Duty:** Yes.

8 **Mark Swartz:** And what does it say? Your email.

9 **Anita Duty:** Reviewing the reconciled report, there appears to be two payments reported at the  
10 bank on 9/30/1993 for \$418.41 and another 10/31/1993 for \$380.28 that we do not show we sent.  
11 That would be where the error occurred if you are asking for my opinion. So I really can't  
12 explain what the escrow agent did, I can only report what we find. I hope that helps.

13 **Mark Swartz:** So there are two deposits that you didn't send checks for, right?

14 **Anita Duty:** Correct.

15 **Mark Swartz:** And then there was one deposit where you sent a check and you couldn't find a  
16 deposit?

17 **Anita Duty:** Yes.

18 **Mark Swartz:** And that's at least from our standpoint, those are the three differences we kind of  
19 identify and it seems like it's probably an escrow agent issue. That's where we are.

20 **Mary Quillen:** Mr. Chairman, was this when our immediate, past escrow agent or two agents  
21 before that?

22 **Mark Swartz:** Oh, it was '93.

23 **Anita Duty:** The original agent.

24 **Mary Quillen:** Oh, this was the original agent.

25 **Anita Duty:** Tazewell National Bank.

26 **Mark Swartz:** This was '93.

27 **Mary Quillen:** Yeah. Okay.

1 **Mark Swartz:** So that would have been the original escrow agent.

2 **Mary Quillen:** Okay. That was the original escrow agent?

3 **Mark Swartz:** Notices to the coal owners, right?

4 **Anita Duty:** Yes.

5 **Mark Swartz:** Notices four coal owners. The mailing on, looks like three different dates and  
6 they all received their mail?

7 **Anita Duty:** Yes.

8 **Mark Swartz:** Have you received anything back from any of them, indicating either an  
9 agreement that they want to rely on or a proceeding or loss that they want to rely on?

10 **Anita Duty:** No.

11 **Mark Swartz:** So they should be dismissed?

12 **Anita Duty:** They should.

13 **Mark Swartz:** And that's all I have.

14 **Butch Lambert:** At the end of our docket, there's a letter signed by Ms. Duty. It says it's to a  
15 coal owner, under House Bill 2058 but it doesn't have anybody listed.

16 **Anita Duty:** On the...

17 **Butch Lambert:** Do you have a form letter?

18 **Anita Duty:** If you look on the original affidavit...

19 **Mark Swartz:** Which is a couple pages...

20 **Anita Duty:** ...a couple pages ahead.

21 **Mark Swartz:** It's Page 32 of 36.

22 **Anita Duty:** Right and #2 we say "we affirm that the coal owner is listed in the unit and properly  
23 noticed under the code." See Annex Letter, it should be annexed example letter dated. Those are  
24 just, we did not...

25 **Paul Kugelman, Jr.:** You're just providing a form letter that you used to notify the coal owners?



1 **Anita Duty:** Right, cause we did not keep copies of the original coal owner letters, and we were  
2 asked...

3 **Paul Kugelman, Jr.:** The way the systems designed it spits out the letter and then it doesn't keep  
4 a copy of it?

5 **Mark Swartz:** It does a mail merge. So we've got a letter that we send to everybody and we put  
6 the addresses on.

7 **Butch Lambert:** You don't keep a copy?

8 **Anita Duty:** If we kept copies of everything. I mean, right now, we're like overloaded with  
9 paper. I mean, there is...

10 **Butch Lambert:** You all every heard of electronics?

11 **Anita Duty:** We didn't keep a copy, so that's the best...

12 **Butch Lambert:** Could be an issue without copies.

13 **Anita Duty:** I mean, we have certified mail receipts.

14 **Mark Swartz:** I mean, if you look, we have a receipt for that piece of mail on a date. I mean, we  
15 can prove we mailed something to them that day and the testimony would be, it's always this  
16 letter. I understand where you're coming from.

17 **Anita Duty:** I mean, I understand we didn't do it. I mean, I can't recreate something I don't  
18 have.

19 **Butch Lambert:** I understand.

20 **Anita Duty:** I mean, I guess we could recreate it but that wouldn't be...

21 **Mark Swartz:** That would be a recreation.

22 **Butch Lambert:** That would be a recreation.

23 **Anita Duty:** Right. I'm giving you the best thing I have right now.

24 **Butch Lambert:** Okay.

25 **Paul Kugelman, Jr.:** A Dateline NBC simulation.

26 **Butch Lambert:** Any other questions from the Board? [No response] Anything further, Mr.  
27 Swartz?

1 **Mark Swartz:** No.

2 **Butch Lambert:** Do I have a motion?

3 **Donnie Rife:** Motion made for approval, Mr. Chair.

4 **Butch Lambert:** I have a motion. Do I have a second?

5 **Mary Quillen:** Second.

6 **Butch Lambert:** I have a motion and I have a second. Any further discussion? [No response] All  
7 in favor, signify by saying yes.

8 **Board:** Yes.

9 **Butch Lambert:** Opposed, no? [No response]

10 **Butch Lambert:** Thank you, Mr. Swartz, that one is approved.

11 **Item Number 8**

12 **Butch Lambert:** A petition from CNX Gas Company, LLC, for (1) the disbursement of  
13 escrowed funds heretofore deposited with the Board's Escrow Agent, attributable to Tracts 1, 4,  
14 & 6, as depicted upon the annexed table; and (2) authorization to begin paying royalties directly  
15 to the parties listed in the petition. This is Docket Number VGOB 92-0721-0235-02. All parties  
16 wishing to testify, please come forward.

17 **Mark Swartz:** Mark Swartz and Anita Duty.

18 **Butch Lambert:** You may proceed, Mr. Swartz.

19 **Mark Swartz:** Thank you. Anita, state your name for us again.

20 **Anita Duty:** Anita Duty.

21 **Mark Swartz:** You're here on behalf of CNX Gas Company, LLC, correct?

22 **Anita Duty:** Yes.

23 **Mark Swartz:** And we're talking about Unit X20?

24 **Anita Duty:** Yes.

25 **Mark Swartz:** And the release that we're seeking is the ability to make some disbursements  
26 from the escrow account; authorization to direct pay the recipients of those disbursements, going

1 forward; and we're dealing with the dismissal of some coal owners under the Virginia Act, as  
2 amended. Correct?

3 **Anita Duty:** Yes.

4 **Mark Swartz:** The reason or reasons that we're here today, we've got some gas claimants under  
5 the Act, who are now entitled to payment?

6 **Anita Duty:** Yes.

7 **Mark Swartz:** And we have given 45-day notices to their conflicting coal owners, and as of  
8 today, we haven't received either an agreement from those coal owners, that they want to rely on  
9 to assert a claim or notice that they've commenced a lawsuit. Correct?

10 **Anita Duty:** Correct.

11 **Mark Swartz:** We have provided a Table 1, which would be directions to the escrow agent?

12 **Anita Duty:** Yes.

13 **Mark Swartz:** It identifies the three tracts?

14 **Anita Duty:** It does.

15 **Mark Swartz:** For each person, we would like to see paid, we give a name and an address.  
16 Correct?

17 **Anita Duty:** Yes.

18 **Mark Swartz:** And the row for each person or company with their name and address, we've  
19 provided a percentage in the columns second from the right. Is that correct?

20 **Anita Duty:** Yes.

21 **Mark Swartz:** And the escrow agent should be instructed to use those percentages for each  
22 person receiving a disbursement, apply it to the balance on hand, when the checks are cut and  
23 that will give the escrow agent the amount to send in the check. Correct?

24 **Anita Duty:** Yes.

25 **Mark Swartz:** We are still going to need escrow and we have a revised Exhibit E that reflects  
26 that?

27 **Anita Duty:** Yes.

1 **Mark Swartz:** And we're going to have a longer list of people we can pay, so an Exhibit EE  
2 reflects the going forward payments?

3 **Anita Duty:** Yes.

4 **Mark Swartz:** We have a certificate with regard to mailing and here we have Harold V. Cooke,  
5 as unclaimed, right?

6 **Anita Duty:** Yes.

7 **Mark Swartz:** And I assume you have a W9 from him?

8 **Anita Duty:** Yes.

9 **Mark Swartz:** When did we get that?

10 **Anita Duty:** October 22, 2015.

11 **Mark Swartz:** Okay, so again, not quite a year?

12 **Anita Duty:** Right.

13 **Mark Swartz:** Okay. Did you do a reconciliation?

14 **Anita Duty:** Yes.

15 **Mark Swartz:** And did you seek to identify all the checks that the operator sent to one or more  
16 of the escrow agents?

17 **Anita Duty:** We did.

18 **Mark Swartz:** And then, did you look for a corresponding deposit?

19 **Anita Duty:** We did.

20 **Mark Swartz:** Were you able to find one?

21 **Anita Duty:** We were able to find them for the majority, but some in the earlier days, like in  
22 1993, that amounts didn't match, exactly. The amounts were off a little.

23 **Mark Swartz:** Okay, and that would have been with the original escrow agent?

24 **Anita Duty:** Yes.

25 **Mark Swartz:** The one that we have limited records?

1 **Anita Duty:** Yes.

2 **Mark Swartz:** And when you do your math, compare it to the October 1<sup>st</sup> Bank and Trust  
3 balance, what was the difference?

4 **Anita Duty:** The bank is showing \$618.24 less than what our calculations shows.

5 **Mark Swartz:** And you reported that on your Exhibit J?

6 **Anita Duty:** Yes.

7 **Mark Swartz:** And with regard to coal owner dismissals, we have, actually two sets of notices  
8 here, I think. If I'm not mistaken. Let me look.

9 **Anita Duty:** We have several.

10 **Mark Swartz:** Right. I mean, but I think we mailed a couple of times because...

11 **Anita Duty:** We were having trouble finding that Stephanie Mullins-Williams, and we finally  
12 did, after four attempts.

13 **Mark Swartz:** Okay, so let's look at the first mailing. So you've got certification of mailing and  
14 it's at Page 29 of 62? Here, this one?

15 **Anita Duty:** Yes.

16 **Mark Swartz:** And you were able to, well you couldn't apparently, it was an undeliverable to  
17 Stephanie Mullins-Williams, correct?

18 **Anita Duty:** Yes.

19 **Mark Swartz:** And then, there was also a subsequent mailing to her and was returned?

20 **Anita Duty:** Yes.

21 **Mark Swartz:** And then mailed a third time to her and you got it?

22 **Anita Duty:** Finally.

23 **Mark Swartz:** Okay.

24 **Anita Duty:** Yes.

25 **Mark Swartz:** And then, we have a Robert Barker and Thomas Mullins. You mailed it and then  
26 several weeks later it appears that you learned that they were deceased?

1 **Anita Duty:** Yes.

2 **Mark Swartz:** I think that you re-mailed to their heirs, if I'm not mistaken?

3 **Anita Duty:** I think so.

4 **Mark Swartz:** Let's look through here and find that. Oaky, it's at Page 45 of 62. Can you read  
5 this?

6 **Anita Duty:** Yes.

7 **Mark Swartz:** And there, that indicates it was identified by three heirs for Robert Barker and  
8 three heirs for Thomas Mullins, Sr. You mailed to all of them and they all signed for their mail  
9 so we got that squared away?

10 **Anita Duty:** Yes.

11 **Mark Swartz:** And the proofs of mailing are behind that?

12 **Anita Duty:** Yes. I think this one was one that was originally submitted to Mr. Cooper, and I  
13 think it was rejected back to us several times because of the coal owner notice and we continued  
14 to try and find them. Then, in addition to that, the account was short, so that's how it ended up on  
15 the docket. It wasn't originally planned that way.

16 **Mark Swartz:** I think that's all I have, Mr. Chairman.

17 **Butch Lambert:** Any questions from the Board? [No response] Just a matter for the record, Mr.  
18 Swartz, under your release sought in the petition, it does not include request to dismiss coal  
19 owners.

20 **Mark Swartz:** Probably should go back to the very beginning. Correct.

21 **Donnie Rife:** Is it intentional?

22 **Mark Swartz:** Yes, it was intentional.

23 **Anita Duty:** To put it in?

24 **Mark Swartz:** No. We are not asking for it.

25 **Anita Duty:** Yeah. Yeah we are.

26 **Mark Swartz:** No. You didn't ask for it hear and you have no mailings. If you don't have a  
27 mailing...

1    **Anita Duty:** Affidavit of mailing for coal owner. Yes, we did do it.

2    **Mark Swartz:** Where is that?

3    **Anita Duty:** That was the people you were just talking about.

4    **Mark Swartz:** Oh, I'm sorry.

5    **Anita Duty:** It's actually an heirship coal owner.

6    **Mark Swartz:** Oh, okay. It's an heirship coal owner. Okay.

7    **Anita Duty:** So we do need to dismiss the coal owner, and we did ask for it.

8    **Mark Swartz:** Okay. Anita has it right. I have it wrong. Sorry. We'll go back, those two  
9    Exhibits that I went through were notices to coal owners and there is a desire, as in the caption of  
10   the complaint rather than the relief requested, to dismiss those owners. So now I need to ask this  
11   question as well: did any of these folks that you eventually tracked down, any of these coal  
12   owners you eventually tracked down in multiple mailings, provide you either with an agreement  
13   that they wanted to rely on as a coal owner or proof of a lawsuit?

14   **Anita Duty:** No.

15   **Butch Lambert:** Thank you.

16   **Mark Swartz:** Thank you.

17   **Butch Lambert:** Any other questions from the Board? [No response] Anything further, Mr.  
18   Swartz?

19   **Mark Swartz:** No.

20   **Butch Lambert:** Do I have a motion?

21   **Donnie Rife:** Motion made for approval, Mr. Chair, and the dismissal of the coal owners.

22   **Butch Lambert:** I have a motion, do I have a second?

23   **Bruce Prather:** Second.

24   **Butch Lambert:** I have a motion and I have a second. Any further discussion? [No response] All  
25   in favor signify by saying yes.

26   **Board:** Yes.

27   **Butch Lambert:** Opposed, no? [No response]

1 **Butch Lambert:** Thank you, Mr. Swartz. That is approved.

2 **Item Number 9**

3 **Butch Lambert:** A petition from CNX Gas Company, LLC, for (1) the disbursement of  
4 escrowed funds heretofore deposited with the Board's Escrow Agent, attributable to Tracts 1 &  
5 1A, as depicted upon the annexed table; and (2) authorization to begin paying royalties directly  
6 to the parties listed in the petition; (3) Dismissal of Coal Owner(s). Docket Number VGOB 92-  
7 0721-0240-06. All parties wishing to testify, please come forward.

8 **Mark Swartz:** Mark Swartz and Anita Duty.

9 **Butch Lambert:** You may proceed, Mr. Swartz.

10 **Mark Swartz:** State your name for us, please?

11 **Anita Duty:** Anita Duty.

12 **Mark Swartz:** And you're here today on behalf of CNX Gas Company, LLC?

13 **Anita Duty:** Yes.

14 **Mark Swartz:** And we are talking about a proposed disbursement from Unit W20?

15 **Anita Duty:** Yes.

16 **Mark Swartz:** And we are looking for a disbursement of authorization to direct pay certain  
17 people going forward and a dismissal of some coal owners that we've noticed?

18 **Anita Duty:** Yes.

19 **Mark Swartz:** And the reason we're here are we now have gas claimants status under the  
20 Virginia Gas and Oil Act and are entitled to payment?

21 **Anita Duty:** Yes.

22 **Mark Swartz:** And we've noticed they're conflicting coal owners and haven't received  
23 responses with evidence of either an agreement or a proceeding?

24 **Anita Duty:** Yes.

25 **Mark Swartz:** If we go through here we have a Table 1?

26 **Anita Duty:** Yes.



1 **Mark Swartz:** And in that Table 1, you have identified the tracts from which disbursements  
2 should be made?

3 **Anita Duty:** Yes.

4 **Mark Swartz:** And you, for each payment of a line or row for each payment or company that is  
5 to receive a disbursement and you've provided their address?

6 **Anita Duty:** Yes.

7 **Mark Swartz:** And the second column from the right, you've given the escrow agent a  
8 percentage?

9 **Anita Duty:** Yes.

10 **Mark Swartz:** And the escrow agent should be directed to apply that percentage to the balance  
11 on hand at the time the disbursement is made to calculate the amount?

12 **Anita Duty:** Yes.

13 **Mark Swartz:** And you're asking for an ability as operator to pay these people directly in the  
14 future?

15 **Anita Duty:** Yes.

16 **Mark Swartz:** And you've provided a revised Exhibit E, which removes the recipient's names  
17 from the escrow requirement?

18 **Anita Duty:** Yes.

19 **Mark Swartz:** And you've provided a revised Exhibit EE, which put these people on pay going  
20 forward?

21 **Anita Duty:** Yes.

22 **Mark Swartz:** And you've got an affidavit of mailing and you're mailing two out of the three,  
23 indicates it was returned, mailed to Leslie Cooke; returned, and then re-mailed, and you got  
24 Leslie?

25 **Anita Duty:** Yes.

26 **Mark Swartz:** Okay, so actually, you solved your problem?

27 **Anita Duty:** We did.

1 **Mark Swartz:** Okay. Then, if we go to Exhibit J, I have another account where there is, did you  
2 look for all the checks that the operator sent to an escrow agent?

3 **Anita Duty:** Yes.

4 **Mark Swartz:** And then did you look for deposits?

5 **Anita Duty:** Yes.

6 **Mark Swartz:** Were you able to find a deposit for every check or were there some issues there?

7 **Anita Duty:** We were, with some variances in the amounts.

8 **Mark Swartz:** Okay, so you found the checks or you found deposits for the checks?

9 **Anita Duty:** Yes.

10 **Mark Swartz:** But then when you do the total, you compare the totals, there's still a difference?

11 **Anita Duty:** There is.

12 **Mark Swartz:** Okay. And what's the difference between your calculation and the banks' balance  
13 in April 2016.

14 **Anita Duty:** The bank is showing \$1,513.87 more.

15 **Mark Swartz:** And then you've got an asterisks there that discusses...

16 **Anita Duty:** Some of those are earlier deposits in '93. We had to base it on estimates.

17 **Mark Swartz:** Okay, then you've mailed to the coal owners on several occasions, correct?

18 **Anita Duty:** Yes.

19 **Mark Swartz:** And you have provided your certification of notice with regard to the coal owners  
20 and it looks like you've got every one of them?

21 **Anita Duty:** We did.

22 **Mark Swartz:** And you would like them to be dismissed, correct?

23 **Anita Duty:** Yes.

24 **Mark Swartz:** That's all I have, Mr. Chairman.

25 **Butch Lambert:** Any questions from the Board? [No response] Anything further, Mr. Swartz?

1 **Mark Swartz:** No.

2 **Butch Lambert:** Do I have a motion?

3 **Donnie Rife:** Motion made for approval, Mr. Chair, with the dismissal of the coal owners.

4 **Mary Quillen:** Second.

5 **Butch Lambert:** I have a motion and I have a second. Any further discussion? [No response] All  
6 in favor signify by saying yes.

7 **Board:** Yes.

8 **Butch Lambert:** Opposed, no? [No response]

9 **Butch Lambert:** Thank you, Mr. Swartz. That is approved.

10 **Mark Swartz:** Thank you.

11 **Item Number 10**

12 **Butch Lambert:** A petition from CNX Gas Company, LLC, for (1) the disbursement of  
13 escrowed funds heretofore deposited with the Board's Escrow Agent, attributable to Tract 1B, as  
14 depicted upon the annexed table; and (2) authorization to begin paying royalties directly to the  
15 parties listed in the petition; (3) Dismissal of Coal Owner. Docket Number VGOB 93-0216-  
16 0326-03. All parties wishing to testify, please come forward.

17 **Mark Swartz:** Mark Swartz and Anita Duty.

18 **Butch Lambert:** You may proceed, Mr. Swartz.

19 **Mark Swartz:** Thank you. State your name, please.

20 **Anita Duty:** Anita Duty.

21 **Mark Swartz:** And are you here today on behalf of CNX Gas Company, LLC?

22 **Anita Duty:** Yes.

23 **Mark Swartz:** With regard to a petition pertaining to Unit Q42?

24 **Anita Duty:** Yes.

25 **Mark Swartz:** And we're asking for the escrow agent to make some disbursements; we're  
26 asking for the right to pay the people who receive the disbursements directly in the future; and  
27 we're asking to dismiss some coal owners?

1 **Anita Duty:** Yes.

2 **Mark Swartz:** And the reason we're here, in terms of the reason behind the request, we have  
3 Norfolk Southern as a gas claimant in one of the tracts, correct?

4 **Anita Duty:** Yes.

5 **Mark Swartz:** And we're giving the coal owners their notices?

6 **Anita Duty:** We have.

7 **Mark Swartz:** And we have not received either evidence of an agreement or evidence of a  
8 proceeding from the coal owners, so we've resolved that conflict?

9 **Anita Duty:** Yes.

10 **Mark Swartz:** And you've provided, I assume the Table 1, yes you have. Page 6 of 22. Norfolk  
11 Southern Railway Company, c/o Pocahontas Land Corporation, should receive the disbursement;  
12 we've provided an address; and they're to get 100% of the money on hand, when the  
13 disbursement is made?

14 **Anita Duty:** Yes.

15 **Mark Swartz:** And this is the one instance that Mr. Prather was asking about, where the escrow  
16 requirement goes away, and Exhibit E says that, right?

17 **Anita Duty:** Yes.

18 **Mark Swartz:** Okay. And we have provided an Exhibit EE, indicating that everybody gets paid  
19 going forward?

20 **Anita Duty:** Yes.

21 **Mark Swartz:** The mailing, you mailed to Norfolk Southern; they got their mail?

22 **Anita Duty:** They did.

23 **Mark Swartz:** With regard to Exhibit J, did you identify all the checks that were paid to an  
24 escrow agent and then try to find a deposit?

25 **Anita Duty:** Yes.

26 **Mark Swartz:** Were you able to do that?

27 **Anita Duty:** Yes.

1 **Mark Swartz:** Was there, however, a pretty significant difference?

2 **Anita Duty:** There was.

3 **Mark Swartz:** Okay.

4 **Anita Duty:** Well, I take that back. There are some deposits that are missing that are  
5 unaccounted for, on the bank side.

6 **Mark Swartz:** Okay. Were those early on?

7 **Anita Duty:** Actually, it's in...

8 **Mark Swartz:** So you've got one difference in when?

9 **Anita Duty:** January 2000.

10 **Mark Swartz:** And you show that you cut a check for what amount?

11 **Anita Duty:** \$1,068.77.

12 **Mark Swartz:** And there's no deposit for that?

13 **Anita Duty:** Correct.

14 **Mark Swartz:** And then there are some issues back in '94-'95, I think?

15 **Anita Duty:** Yes, with the ending balance. The bank doesn't report the ending balance, probably  
16 like the beginning balance and the ending balance; if you take the prior balance deposits and then  
17 the ending balance, it doesn't make sense. So the ending balance are always off a little bit in  
18 those years.

19 **Mark Swartz:** So between the missing deposit and then that ending balance issue, there is a  
20 difference of how much?

21 **Anita Duty:** \$2,204.38.

22 **Mark Swartz:** And that, the bank is showing that amount, less than what your calculations  
23 would indicate?

24 **Anita Duty:** Correct.

25 **Mark Swartz:** For those reasons, at least as far as you know.

26 **Anita Duty:** As far as I know, yes.

1 **Mary Quillen:** Mr. Chairman, what year were those deposits that you couldn't account for? Did  
2 you say '95?

3 **Mark Swartz:** Just one deposit.

4 **Anita Duty:** The one deposit was January 2000, and I think that was the period of time where we  
5 transferred from First Virginia to First Union, maybe, or Wachovia. January 2000 is when we  
6 changed banks or you guys changed banks.

7 **Mary Quillen:** I think it might have been First Union in 2000 because...

8 **Anita Duty:** Cause it would have been First Union before Wachovia, because First Union came  
9 first.

10 **Mary Quillen:** Yes, it was First Union before Wachovia, so I think it might have been First  
11 Union.

12 **Anita Duty:** Well, it would have been whatever came from First Virginia, cause they were most  
13 likely sent to First Virginia and didn't make it to First Virginia, or however, I don't know. I can't  
14 speak for it.

15 **Mark Swartz:** Then you mailed to the coal owner McGuire Land Trust?

16 **Anita Duty:** Yes.

17 **Mark Swartz:** And they got their mail?

18 **Anita Duty:** Yes.

19 **Mark Swartz:** And you're asking that they be dismissed?

20 **Anita Duty:** Yes.

21 **Mark Swartz:** And that's all I have, Mr. Chairman.

22 **Butch Lambert:** Any questions from the Board?

23 **Donnie Ratliff:** Mr. Chairman?

24 **Butch Lambert:** Mr. Ratliff.

25 **Donnie Ratliff:** Norfolk Southern is going to end up with \$1,944.88. Is that because that's the  
26 total that's in that account?

27 **Mark Swartz:** Correct?

1 **Donnie Ratliff:** So the missing deposits, whoever is the last one out, absorbs that?

2 **Mark Swartz:** Yes and no. Well Anita makes a great point. Norfolk Southern gets 100% of this  
3 one, so you're absolutely right in this instance, but let's assume that we had an account that was  
4 short that had multiple people in it, in a series of disbursements, everybody would kind of take  
5 that hit until you get to the last person, if the account is short.

6 **Anita Duty:** Most likely, the person that...

7 **Mark Swartz:** In this case, you're absolutely right and it's just one person but in other cases, it  
8 would be a collective.

9 **Mary Quillen:** So it would be shared by everyone that was...

10 **Mark Swartz:** To some extent, but it wouldn't be equally shared.

11 **Anita Duty:** Probably based on their proportions of shares. Like if they were getting 20% or  
12 50%, you know, the 50% would be short.

13 **Mark Swartz:** Norfolk Southern can sort of explain why they're not here because we told them  
14 because if they see this paperwork, we settle a whole bunch of cases with them involving a  
15 substantial amount of money and have been back and forth with, you know, Rick, about it. It's  
16 been a long drawn out negotiation title but they're getting a ton of money out of these and I think  
17 they are just, they're dealing with it, but, it is a problem, you know? And the last comment I  
18 would make: I don't know, I think you have sort of a found money account that we've been  
19 maintaining.

20 **Rick Cooper:** We do have an account with some money and we do not know where they go.

21 **Mark Swartz:** Right, so I guess there's eventually might be an opportunity to deal with some of  
22 these problems, but currently, there really isn't. You're absolutely right.

23 **Mary Quillen:** So, eventually, when all of this money is disbursed out of this account, then that  
24 will settle up with any this found money?

25 **Mark Swartz:** Well, this account, you mean the global?

26 **Mary Quillen:** Yeah, yeah, the whole escrow account.

27 **Mark Swartz:** I don't think there's a plan for that, but...

28 **Mary Quillen:** Well, I'm being optimistic.

29 **Mark Swartz:** No, no. I don't think there's a plan for having excess money at the end and how  
30 to disburse that. That's what I'm saying. Not that there isn't a plan to be done. Okay?

1 **Mary Quillen:** Oh, oh, oh. Right. I see what you're saying.

2 **Butch Lambert:** Paying attention over the years, we've seen accounts that are short; we've seen  
3 some accounts that are overpaid. So hopefully, we'll keep our fingers crossed that it will be a  
4 wash at the end.

5 **Mark Swartz:** Or it'll be done or closed, hopefully.

6 **Butch Lambert:** Or closed. Anything further, Mr. Swartz?

7 **Mark Swartz:** Not on this one?

8 **Butch Lambert:** Do I have a motion?

9 **Donnie Ratliff:** Motion to approve, Mr. Chair.

10 **Mary Quillen:** Second.

11 **Butch Lambert:** I have a motion and I have a second. Any further discussion? [No response] All  
12 in favor signify by saying yes.

13 **Board:** Yes. We're going to take about a five minute, just five minutes and then we'll come right  
14 back and jump back into it. I've got to take a phone call.

15 **Item Number 11**

16 **Butch Lambert:** A petition from CNX Gas Company, LLC, for (1) the disbursement of  
17 escrowed funds heretofore deposited with the Board's Escrow Agent, attributable to Tracts 1, 3,  
18 5, and a portion of 7, 12 & 14, as depicted upon the annexed table; and (2) authorization to begin  
19 paying royalties directly to the parties listed in the petition; (3) Dismissal of Coal Owner(s).  
20 Docket Number VGOB 95-0418-0500-04. All parties wishing to testify, please come forward.

21 **Mark Swartz:** Mark Swartz and Anita Duty.

22 **Butch Lambert:** You may proceed, Mr. Swartz.

23 **Mark Swartz:** Thank you. Anita, state your name for us.

24 **Anita Duty:** Anita Duty.

25 **Mark Swartz:** You're here on behalf of CNX Gas Company, LLC?

26 **Anita Duty:** Yes.

27 **Mark Swartz:** And we're here about a request for disbursement from Drilling Unit X29?



1 **Anita Duty:** Yes.

2 **Mark Swartz:** And in addition to a disbursement from the escrow account, we would like  
3 authorization for direct pay and a dismissal of coal owners, right?

4 **Anita Duty:** Yes.

5 **Mark Swartz:** And the basis for the request or reason for the request is, the application, the act,  
6 we now have some gas claimants that we can pay?

7 **Anita Duty:** Yes.

8 **Mark Swartz:** And we have noticed conflicting coal owners, giving them the 45-day notice.  
9 Have we received anything in response, any evidence in response of an agreement or a  
10 proceeding from any of the coal owners?

11 **Anita Duty:** We have not.

12 **Mark Swartz:** Let's look at Table 1, it's pretty extensive here, correct?

13 **Anita Duty:** Yes.

14 **Mark Swartz:** It's a percentage disbursement request?

15 **Anita Duty:** Yes.

16 **Mark Swartz:** And for the tracts that we're seeking to have disbursed, or a portion, have you  
17 provided the name of every person and/or company that should receive a check?

18 **Anita Duty:** Yes.

19 **Mark Swartz:** Have you provided an address?

20 **Anita Duty:** Yes.

21 **Mark Swartz:** And for each person or company, have you provided, in the second column form  
22 the right-hand side of the sheet, a percentage that the escrow agent should use?

23 **Anita Duty:** Yes.

24 **Mark Swartz:** And the escrow agent should use that percentage, apply it to the balance when the  
25 amount of the check is being calculated, that will generate the check amount; and that's what  
26 they should use?

27 **Anita Duty:** Yes.

1    **Mark Swartz:** And they should be instructed to do that?

2    **Anita Duty:** That's correct.

3    **Mark Swartz:** Okay. And then, as a result, if these disbursements are approved, you've got a  
4    revised Exhibit E, that shows that we're going to need to continue escrow, but obviously, it's a  
5    much shorter list?

6    **Anita Duty:** Yes.

7    **Mark Swartz:** And you've added the people that we're proposing to receive the disbursements,  
8    to Exhibit EE, to show to put them on pay, going forward?

9    **Anita Duty:** Yes.

10   **Mark Swartz:** And it looks like we mailed, everybody got the mail, except Diana Asbury  
11   refused it, right?

12   **Anita Duty:** Yes.

13   **Mark Swartz:** And Randall L. Keen, unclaimed?

14   **Anita Duty:** Yes.

15   **Mark Swartz:** I assume you have W9's from both of them?

16   **Anita Duty:** Yes.

17   **Donnie Ratliff:** Mr. Chairman?

18   **Butch Lambert:** Mr. Ratliff?

19   **Donnie Ratliff:** Ralph Douglas Keen and Janet Willett is on here. You said Ralph was dead? Is  
20   deceased? And I don't remember why we took Janet Willett. She hadn't accepted her mailing,  
21   right? She refused to sign for mail.

22   **Anita Duty:** On this one. On the last one, she just didn't pick it up, period.

23   **Mary Quillen:** What about the man that's dead? What about the John, that's passed away?

24   **Donnie Ratliff:** Did he sign for it?

25   **Anita Duty:** Who?

26   **Donnie Ratliff:** Did Ralph Douglas Keen sign this time or did someone sign for him?

1 **Anita Duty:** Well, and see, it depends on, he just died recently, so it's like, probably at the time  
2 we did the notice, it was probably, you know.

3 **Mary Quillen:** Okay.

4 **Donnie Ratliff:** Okay. I just noticed those two names was passed away.

5 **Anita Duty:** Yeah.

6 **Donnie Ratliff:** I'm sorry.

7 **Anita Duty:** I know we've had a couple of checks that Jody's re-issued to the heirs because of it  
8 being so recent. Remember that Ralph Keen? I think there's six heirs. I mean she refuses this  
9 one, so. I guess that is on her, so I don't know what to do about the previous docket item. We  
10 have a W9 for her.

11 **Butch Lambert:** For?

12 **Anita Duty:** Janet. And obviously, we've mailed it to the correct place, because she actually  
13 refused it this time, so. We want to leave her on there?

14 **Rick Cooper:** To bring everybody up to, I guess what's complicating this; on Item 6, the same  
15 two people came up and you were going to remove those two people from the disbursement.  
16 Now the same two name come up again here and I think Anita's question is, do we leave this  
17 letter revised Item 6 and move forward, and the same two people are showing up here and so, her  
18 question is, do we disburse both of them or do we take them out of both of those: 6 and 11?

19 **Anita Duty:** Can we update to show the heirs of Ralph and...

20 **Mary Quillen:** Well, we took them out of the other one.

21 **Butch Lambert:** We took them out.

22 **Donnie Rife:** We'll have to take them out of this one too.

23 **Anita Duty:** That's what I'm saying, we need to do the same thing, I guess.

24 **Mary Quillen:** That's right, yeah, if we took them out of the other one, and then we would have  
25 to take them out of this one. Correct?

26 **Anita Duty:** Well, in this case, he actually received a notice and the only difference now is, we  
27 need to pay the heirs rather than pay him. I mean the notice was proper in this one.

28 **Donnie Ratliff:** Is he the guy that had a well or didn't have a well.

1    **Anita Duty:** This is totally unrelated to any of the other stuff.

2    **Donnie Ratliff:** A different day, a different dollar.

3    **Mark Swartz:** This is a different problem.

4    **Anita Duty:** Well, and then, Janet actually refused this, so this petition, actually the way it is,  
5    even though we know that Ralph Keen's heirs should be paid, should be fine. I don't think we  
6    need to take anybody off of this one. Unless, just for the sake of being consistent, if you want to  
7    do both with both dockets, that's fine too.

8    **Mary Quillen:** That's the consistency of it.

9    **Butch Lambert:** Or does the check go to Ralph Keen and who'll end up with this, whoever's the  
10   trustee?

11   **Anita Duty:** Well, we actually have the heirs because this, Ralph Keen has been paid under  
12   several petitions.

13   **Butch Lambert:** Consol. But if you know the heirs...

14   **Anita Duty:** We do, and the notice was proper at the time.

15   **Butch Lambert:** Then they'd be listed here though. I'm just saying.

16   **Anita Duty:** This was a petition that was originally sent for Mr. Cooper to approve and because  
17   of the issue...

18   **Butch Lambert:** Before Mr. Keen passed away.

19   **Anita Duty:** In the meantime, that has happened.

20   **Donnie Rife:** Same one.

21   **Anita Duty:** So now it's on the docket and it wasn't originally meant to be on the docket, the  
22   only reason it's on the docket is because Mr. Cooper put it on here.

23   **Butch Lambert:** He does have a trustee, right?

24   **Mark Swartz:** Do what?

25   **Anita Duty:** He had a will and he has heirs. We know who his heirs are; we have W9's for his  
26   heirs.

1 **Mark Swartz:** If he's got a will and he's got an executor, send the check and the executor can  
2 distribute it.

3 **Butch Lambert:** That's what I'm saying.

4 **Mark Swartz:** Right. I agree with you.

5 **Butch Lambert:** That way we don't have to change anything.

6 **Anita Duty:** Well, that's the question: do we do it in both dockets, or do we just do it in this  
7 one? Do we pay the heirs of Ralph Keen?

8 **Donnie Rife:** I think if we do it in one, we have to do it in both of them, Mr. Chairman. I might  
9 be wrong.

10 **Mary Quillen:** We'd have to go back and revisit, what was it? Item number...

11 **Mark Swartz:** Okay, the prior one, he didn't get the mail before he died, this one, he got the  
12 mail before he died; it got continued.

13 **Paul Kugelman, Jr.:** Oh, there's the difference.

14 **Mark Swartz:** So that's the difference. We need to do this one and it's not inconsistent.

15 **Butch Lambert:** It's not inconsistent, just send this to the executor and we're done with it.

16 **Bruce Prather:** He'd have an executor. Let them handle it.

17 **Mark Swartz:** Correct. But this one, we got the mailing, it was delayed for other reasons and  
18 this should be good to go with the will and the executor. Well, we needed to...

19 **Butch Lambert:** That's easy.

20 **Mark Swartz:** Now it is.

21 **Anita Duty:** Okay, so in the previous docket...

22 **Butch Lambert:** Don't do nothing, because he received it.

23 **Paul Kugelman, Jr.:** But he didn't receive it.

24 **Anita Duty:** He did not receive it.

25 **Mark Swartz:** We just need to leave it the way it is.

26 **Paul Kugelman, Jr.:** That's why he was taken out of the other one.

1    **Anita Duty:** And the only reason he didn't receive it...

2    **Butch Lambert:** We just need to leave that one the way it is.

3    **Mark Swartz:** Correct.

4    **Paul Kugelman, Jr.:** And he received this one so he's on notice and now it goes to his estate.

5    **Mark Swartz:** Correct.

6    **Anita Duty:** So don't change either one?

7    **Paul Kugelman, Jr.:** No.

8    **Mark Swartz:** No, this is good. We'll make a disbursement here.

9    **Paul Kugelman, Jr.:** Stop. Stop talking. [Laughs]

10   **Mark Swartz:** We're going to make this disbursement, as is.

11   **Anita Duty:** Got it.

12   **Mark Swartz:** And his estate's going to deal with it. We're going to leave the other one alone

13   because, because. I'm just going to leave it at that.

14   **Sarah Gilmer:** So this check will need to be made out to the estate of Ralph D. Keen...

15   **Butch Lambert:** No, no, no. She can just mail it to that, whoever's the executor of his estate will

16   receive the check.

17   **Rick Cooper:** So six is staying like it was?

18   **Mark Swartz:** Correct.

19   **Anita Duty:** Janet's staying there because she refused it.

20   **Rick Cooper:** So you've got to revise the docket?

21   **Anita Duty:** No, not this one.

22   **Mark Swartz:** Not this one. This one's good.

23   **Rick Cooper:** Okay. Good.

24   **Anita Duty:** We're not going to revise this one. We will revise the previous one.

1 **Mark Swartz:** She's good now. Now he's the problem. Okay, it's like a disease that gets passed  
2 around [laughs]

3 **Paul Kugelman, Jr.:** Hopefully it doesn't go all the way.

4 **Mark Swartz:** Yeah, all the way home. Oh, my gosh, yeah. Okay. Exhibit J. We're not done.  
5 And the reason it's here is because it's over a \$500.00 difference, right?

6 **Anita Duty:** Yes.

7 **Mark Swartz:** So Exhibit J, did you look for your checks; did you look for a corresponding  
8 deposit; and at the end of the day, how did that go?

9 **Anita Duty:** We have some of the same issues with inconsistent deposit verses, well, our deposit  
10 verses what the bank records. The numbers are not exactly the same.

11 **Mark Swartz:** Okay, and are those very early on that we see?

12 **Anita Duty:** They are.

13 **Mark Swartz:** Okay, and then, at the end, you did your calculations and try to come up with  
14 your estimate of what the balance should be. Correct?

15 **Anita Duty:** Yes.

16 **Mark Swartz:** And you compared that to the banks reported balance at the end of April 2016  
17 and there was a difference of what amount?

18 **Anita Duty:** \$923.06.

19 **Mark Swartz:** And the bank had a number smaller than your calculation by that amount?

20 **Anita Duty:** Yes.

21 **Mark Swartz:** It look like you have a coal owner affidavit of mailing and you mailed, it looks  
22 like everybody either got their mail or it was hand delivered, in one instance, correct?

23 **Anita Duty:** Yes.

24 **Mark Swartz:** And, I think we previously indicated, you got nothing back from any of these  
25 people of evidence of an agreement or proceeding?

26 **Anita Duty:** That's correct.

27 **Mark Swartz:** So they should be dismissed?

1 **Anita Duty:** Yes.

2 **Mark Swartz:** That's all I have.

3 **Butch Lambert:** Any questions from the Board? [No response] Anything further, Mr. Swartz?

4 **Mark Swartz:** No.

5 **Donnie Ratliff:** Move that we approve what's presented, Mr. Chair.

6 **Donnie Rife:** I'll second, Mr. Chair.

7 **Butch Lambert:** I have a motion and I have a second. Any further discussion? [No response] All  
8 in favor, signify by saying yes.

9 **Board:** Yes.

10 **Butch Lambert:** Opposed, no? [No response]

11 **Butch Lambert:** Thank you, Mr. Swartz. That one is approved.

12 **Item Number 12**

13 **Butch Lambert:** A petition from CNX Gas Company, LLC, for (1) the disbursement of  
14 escrowed funds heretofore deposited with the Board's Escrow Agent, attributable to Tract 4B, as  
15 depicted upon the annexed table; (2) authorization to begin paying royalties directly to the parties  
16 listed in the petition; (3) Dismissal of Coal Owner. This is Docket Number VGOB 02-0917-  
17 1072-03. All parties wishing to testify, please come forward.

18 **Mark Swartz:** Mark Swartz and Anita Duty.

19 **Butch Lambert:** You may proceed, Mr. Swartz.

20 **Mark Swartz:** Anita, state your name for us.

21 **Anita Duty:** Anita Duty.

22 **Mark Swartz:** And you and I are here on behalf of CNX Gas Company, LLC today?

23 **Anita Duty:** Yes.

24 **Mark Swartz:** This is a petition pertaining to BA100?

25 **Anita Duty:** Yes.



1 **Mark Swartz:** And we're asking for a disbursements form escrow; direct payoff authorization;  
2 and dismissal, with regard to some coal owners?

3 **Anita Duty:** Yes.

4 **Mark Swartz:** The reason for the factual basis for the request, we have some people who are  
5 determined to be gas claimants under the revised Virginia Gas and Oil Act, right?

6 **Anita Duty:** Yes.

7 **Mark Swartz:** And then we've got some coal claimants that we want to dismiss that had some  
8 conflicting claims?

9 **Anita Duty:** Yes.

10 **Mark Swartz:** And have you done a Table 1?

11 **Anita Duty:** We have.

12 **Mark Swartz:** And there's one, Fred B. Gent is to receive the disbursement?

13 **Anita Duty:** Yes.

14 **Mark Swartz:** And you've provided his address?

15 **Anita Duty:** Yes.

16 **Mark Swartz:** And you've provided a percentage for the escrow agent to use in calculating a  
17 dollar amount and that 26.4436% should be multiplied by the balance on hand at the time the  
18 disbursement is made?

19 **Anita Duty:** Yes.

20 **Mark Swartz:** Revised Exhibit E to take Mr. Gent off?

21 **Anita Duty:** Yes.

22 **Mark Swartz:** And you've added his to Exhibit EE?

23 **Anita Duty:** We have.

24 **Mark Swartz:** And you have provided an affidavit of mailing that shows that Mr. Gent got his  
25 mail?

26 **Anita Duty:** Yes.

1 **Mark Swartz:** And then let's just skip ahead to the coal. You've provided a certification of  
2 notice of Buchanan Coal Company got their mail, as a coal owner?

3 **Anita Duty:** Yes.

4 **Mark Swartz:** And did they respond within the 45 days?

5 **Anita Duty:** They did not.

6 **Mark Swartz:** Okay, going back to Exhibit J, you did a reconciliation?

7 **Anita Duty:** Yes.

8 **Mark Swartz:** And first of all, did you look for all the checks that the operator issued to an  
9 escrow agent and then did you look for a corresponding deposit?

10 **Anita Duty:** Yes.

11 **Mark Swartz:** When you did that, were you able to find one?

12 **Anita Duty:** We found all of them with the exception of the August 2006 and the September  
13 2006.

14 **Mark Swartz:** So you had checks that you had written but that didn't wind up being booked in  
15 this account, as far as you could tell?

16 **Anita Duty:** Correct.

17 **Mark Swartz:** And when you did your math then, what amount did you come up with and what  
18 amount did the bank, and did the bank come up with a different amount?

19 **Anita Duty:** The bank has \$1,067.88 more.

20 **Mark Swartz:** Than your calculations?

21 **Anita Duty:** Yes.

22 **Mark Swartz:** I believe that's all I have, Mr. Chairman.

23 **Butch Lambert:** Questions from the Board? Anything further, Mr. Swartz?

24 **Mark Swartz:** No.

25 **Butch Lambert:** Do I have a motion?

26 **Donnie Rife:** Motion made for approval, Mr. Chair.

1 **Donnie Ratliff:** I'll second that.

2 **Butch Lambert:** I have a motion and I have a second. Any further discussion? [No response] All  
3 in favor, signify by saying yes.

4 **Board:** Yes.

5 **Butch Lambert:** Opposed, no? [No response]

6 **Butch Lambert:** Thank you, Mr. Swartz. That one is approved.

7 **Item Number 13**

8 **Butch Lambert:** A petition from CNX Gas Company, LLC, for (1) the disbursement of  
9 escrowed funds heretofore deposited with the Board's Escrow Agent, attributable to Tracts 2, 3,  
10 and a portion of Tract 6, as depicted upon the annexed table; and (2) authorization to begin  
11 paying royalties directly to the parties listed in the petition. Docket Number VGOB 05-1213-  
12 1547-02. All parties wishing to testify, please come forward.

13 **Mark Swartz:** Mark Swartz and Anita Duty.

14 **Butch Lambert:** You may proceed.

15 **Mark Swartz:** Anita, state your name for us, please.

16 **Anita Duty:** Anita Duty.

17 **Mark Swartz:** And you are here today on behalf of CNX Gas Company, LLC. Correct?

18 **Anita Duty:** Yes.

19 **Mark Swartz:** And we are dealing with BK115?

20 **Anita Duty:** Yes.

21 **Mark Swartz:** And we're asking for a disbursement for a direct pay and dismissal of some coal  
22 owners?

23 **Anita Duty:** Yes.

24 **Mark Swartz:** And the factual basis is: once again, we have some people that are now gas  
25 claimants under the act that are eligible to be paid; we've given noticed to the, previously given  
26 notice to the coal owners who are previously dismissed, right?

27 **Anita Duty:** Yes.

1    **Mark Swartz:** And we're seeking to disburse to these folks and pay them directly in the future?

2    **Anita Duty:** Yes.

3    **Mark Swartz:** You've provided the Board with a Table 1?

4    **Anita Duty:** Yes.

5    **Mark Swartz:** It identifies the three tracts or portions, two tracts and a portion of another tract  
6    that are going to be disbursed?

7    **Anita Duty:** Yes.

8    **Mark Swartz:** Do you identify, by name, the people and/or companies that are to receive a  
9    payment?

10   **Anita Duty:** Yes.

11   **Mark Swartz:** Have you provided an address for each one?

12   **Anita Duty:** Yes.

13   **Mark Swartz:** And have you provided a percentage for each one, that the escrow agent is to use  
14   in calculating the dollar amount to be disbursed?

15   **Anita Duty:** Yes.

16   **Mark Swartz:** And that percentage is in the second column from the right-hand side on the line  
17   that each person appears?

18   **Anita Duty:** It is.

19   **Mark Swartz:** Okay, and that's directions to the escrow agent, with regard to the disbursement?

20   **Anita Duty:** Yes.

21   **Mark Swartz:** We're going to continue to need escrow, so we have an Exhibit E but you have  
22   removed the folks who are going to receive this disbursement from that?

23   **Anita Duty:** Yes.

24   **Mark Swartz:** And you've put them on pay on your revised Exhibit EE?

25   **Anita Duty:** Yes.

26   **Mark Swartz:** And we're asking to be able to pay them, going forward?

1    **Anita Duty:** We are.

2    **Mark Swartz:** You have provided your certification of notice, with regard to the payees; they all  
3    signed for their mail?

4    **Anita Duty:** Yes.

5    **Mark Swartz:** And we have an Exhibit J, correct?

6    **Anita Duty:** We do.

7    **Mark Swartz:** And did you identify the royalty payment checks that were sent to an escrow  
8    agent and then look for a deposit?

9    **Anita Duty:** Yes.

10   **Mark Swartz:** Did you find one for each?

11   **Anita Duty:** We did not find the deposit being credited to the bank in August, in September of  
12   2006.

13   **Mark Swartz:** And what were those amounts?

14   **Anita Duty:** \$138.21 and \$556.24, which totals \$694.45.

15   **Mark Swartz:** You couldn't find it?

16   **Anita Duty:** We couldn't find it.

17   **Mark Swartz:** And then when you did your math and compared it to the bank balance as of June  
18   2016, what was the difference?

19   **Anita Duty:** The bank was actually short \$701.00.

20   **Mark Swartz:** Compared to your calculations?

21   **Anita Duty:** Yes.

22   **Mark Swartz:** Okay, and your assumption is that those deposits may be a contributing factor to  
23   that, right?

24   **Anita Duty:** Yes.

25   **Mark Swartz:** And you noticed Swords Creek Coal and they sent for their mail?

26   **Anita Duty:** Yes.

1 **Mark Swartz:** And that was over a year ago and you don't have a response from them, either of  
2 an agreement or a proceeding?

3 **Anita Duty:** Correct.

4 **Mark Swartz:** And they should be dismissed?

5 **Anita Duty:** Yes.

6 **Mark Swartz:** That's all I have.

7 **Butch Lambert:** Any questions from the Board?

8 **Mary Quillen:** Just one question, on that...shoot. Forget it

9 **Mark Swartz:** That happens to me too.

10 **Mary Quillen:** I remembered what it was when you said it. I looked at it and it's gone now.

11 **Donnie Ratliff:** Since that's gone, Mr. Chairman, I make a motion to approve as presented.

12 **Donnie Rife:** I'll second that.

13 **Butch Lambert:** I have a motion and I have a second. Any further discussion? All in favor,  
14 signify by saying yes.

15 **Board:** Yes.

16 **Butch Lambert:** Opposed, no? [No response]

17 **Butch Lambert:** Lunches are here and Mr. Cooper, what time is your next hearing start?

18 **Rick Cooper:** 2 o'clock.

19 **Butch Lambert:** I'm going to suggest that we break right now and take a 30 minute lunch, if we  
20 could, and get right back at it so Mr. Cooper can make his 2 o'clock.

21 **Item Number 14**

22 **Butch Lambert:** A petition from CNX Gas Company, LLC, for 1) the disbursement of escrowed  
23 funds heretofore deposited with the Board's Escrow Agent, attributable to Tracts 1P, 2B & 3C,  
24 as depicted upon the annexed table; and (2) authorization to begin paying royalties directly to the  
25 parties listed in the petition. Docket Number VGOB 08-0318-2163-02. All parties wishing to  
26 testify, please come forward.

27 **Mark Swartz:** Mark Swartz and Anita Duty.

1 **Butch Lambert:** You may proceed.

2 **Mark Swartz:** Anita, state your name for us again.

3 **Anita Duty:** Anita Duty.

4 **Mark Swartz:** And you are here today on behalf of CNX Gas Company, LLC?

5 **Anita Duty:** Yes.

6 **Mark Swartz:** And we're hear with regard to AW133?

7 **Anita Duty:** We are.

8 **Mark Swartz:** We're requesting a disbursement; authorizations for direct pay; and dismissal of  
9 some coal owners, right?

10 **Anita Duty:** Yes.

11 **Mark Swartz:** The reason we're making this request is we have some royalty split agreements  
12 and we have some gas claimants under the Virginia Gas and Oil Act, right?

13 **Anita Duty:** Yes.

14 **Mark Swartz:** And you have given notices to, previously given notices to coal owners who were  
15 dismissed in a prior hearing, right?

16 **Anita Duty:** Yes.

17 **Mark Swartz:** So we haven't done that again.

18 **Anita Duty:** Right.

19 **Mark Swartz:** If we go to Table 1, which is my Page 85, is this your, would this be your  
20 instructions that the Board should transmit to the escrow agent to make the disbursements?

21 **Anita Duty:** Yes.

22 **Mark Swartz:** And have you identified the tract?

23 **Anita Duty:** Yes.

24 **Mark Swartz:** And have you for each disbursement, given the name of a company or a person  
25 and their address?

26 **Anita Duty:** Yes.

1 **Mark Swartz:** And for each person or company, have you set forth a percentage that the escrow  
2 agent should use when calculating the dollar amount?

3 **Anita Duty:** Yes.

4 **Mark Swartz:** And the escrow agent should use that percentage; apply it to the balance on hand  
5 on the date of the disbursement; and that percentage, on the second column to the right, will  
6 generate the number?

7 **Anita Duty:** Yes.

8 **Mark Swartz:** Okay, and have you revised Exhibit E to extract the people that we're going to be  
9 paying?

10 **Anita Duty:** Yes.

11 **Mark Swartz:** And then we've asked to be able to pay them directly in the future, so have you  
12 added them to a revised Exhibit EE?

13 **Anita Duty:** Yes.

14 **Mark Swartz:** Mailing here, we have, I think you mailed to five people and companies and  
15 everybody received their mail?

16 **Anita Duty:** Yes.

17 **Mark Swartz:** We've got an Exhibit J. Once again, did you accumulate a list of all of your  
18 checks that you sent and did you compare those to deposit records and see if there was a deposit  
19 for everything?

20 **Anita Duty:** We did.

21 **Mark Swartz:** And when you did that, was there a difference?

22 **Anita Duty:** All of the checks were accounted for but there was still a difference in the total  
23 balance.

24 **Mark Swartz:** So you found all checks as deposits?

25 **Anita Duty:** Yes.

26 **Mark Swartz:** But there was a difference in your calculations as to the estimated balance and the  
27 banks, in April?

28 **Anita Duty:** Yes.



1 **Mark Swartz:** What was the difference?

2 **Anita Duty:** The bank was showing \$48.75 more.

3 **Mark Swartz:** And we had previously noticed the coal owners in September of Coal Creek Coal  
4 Company in September 2015, right?

5 **Anita Duty:** Yes.

6 **Mark Swartz:** And we mailed to them on that date, and have you gotten anything back from  
7 them?

8 **Anita Duty:** No.

9 **Mark Swartz:** In terms of evidence?

10 **Anita Duty:** No, we haven't.

11 **Mark Swartz:** That's all I have, Mr. Chairman.

12 **Butch Lambert:** Any questions from the Board? [No response] Do I have a motion?

13 **Donnie Rife:** Motion made for approval, Mr. Chair.

14 **Donnie Ratliff:** Second.

15 **Butch Lambert:** I have a motion and I have a second. Any further discussion? All in favor,  
16 signify by saying yes.

17 **Board:** Yes.

18 **Butch Lambert:** Opposed, no? [No response]. Thank you, Mark. That's approved.

19 **Item Number 15**

20 **Butch Lambert:** A petition from CNX Gas Company, LLC, for pooling under Oakwood  
21 Coalbed Methane Gas Field I. Unit T55. Docket Number VGOB 16-0920-4096. All parties  
22 wishing to testify, please come forward.

23 **Mark Swartz:** Mark Swartz and Anita Duty. We've got some revised Exhibits, I think, right?

24 **Anita Duty:** Did you look at these? They have been loaded.

25 **Mark Swartz:** Anita, this is a pooling application, correct?

26 **Anita Duty:** Yes.

1 **Mark Swartz:** And we're seeking to pool interest in Unit T55?

2 **Anita Duty:** Yes.

3 **Mark Swartz:** And I think that's an Oakwood unit, correct?

4 **Anita Duty:** It is.

5 **Mark Swartz:** The plat, it's the Oakwood field, and how many acres?

6 **Anita Duty:** 80.

7 **Mark Swartz:** Okay, and I think the plat shows the well.

8 **Anita Duty:** There's a new plat.

9 **Mark Swartz:** There's a new plat. Okay.

10 **Anita Duty:** This one.

11 **Mark Swartz:** The new plat would be in the revised Exhibits you just got. And the new plat  
12 shows T55A in the drilling window, right?

13 **Anita Duty:** Yes.

14 **Mark Swartz:** Okay, and it shows T55 in the upper Northwest corner, just outside the drilling  
15 unit?

16 **Anita Duty:** Yes.

17 **Mark Swartz:** And that's the locations and you've filed the Exhibit today?

18 **Anita Duty:** We did.

19 **Mark Swartz:** Okay. As long as we're talking about the revisions, you do have an Exhibit B2,  
20 correct?

21 **Anita Duty:** Yes.

22 **Mark Swartz:** And that is something that we normally use to dismiss someone?

23 **Anita Duty:** Yes.

24 **Mark Swartz:** And who are we asking to be dismissed?

25 **Anita Duty:** Raymond Nelson.

26 **Mark Swartz:** And the reason for that?

1    **Anita Duty:** It's leased.

2    **Mark Swartz:** Okay, so we subsequently obtained a lease from him?

3    **Anita Duty:** Yes.

4    **Mark Swartz:** And, did you revise Exhibit B3 accordingly?

5    **Anita Duty:** Yes.

6    **Mark Swartz:** Okay. This unit, we were talking about, it's in Oakwood 80, what did you do to  
7    give notice that there was going to be a hearing today?

8    **Anita Duty:** We mailed, certified mail return-receipt requested, on August 19, 2016; published  
9    the notice and location map in the Bluefield Daily Telegraph on August 24<sup>th</sup>.

10   **Mark Swartz:** And you're, presumably, because of B2, at Paragraph 7, you have the two  
11   response, correct?

12   **Anita Duty:** Yes.

13   **Mark Swartz:** Mr. Nelson and the Commonwealth?

14   **Anita Duty:** Yes.

15   **Mark Swartz:** And you're asking, I assume, that the Board dismiss Mr. Nelson as a respondent,  
16   so that the only respondent party would be the Commonwealth?

17   **Anita Duty:** Correct.

18   **Mark Swartz:** And did they have a title conflict?

19   **Anita Duty:** No.

20   **Mark Swartz:** They do not?

21   **Anita Duty:** No. Well, let me check. I'm not sure. Yeah, they do.

22   **Mark Swartz:** Okay. So there is a title conflict between the fellow you just leased and the  
23   Commonwealth?

24   **Anita Duty:** Yes.

25   **Mark Swartz:** And what's the acreage?

26   **Anita Duty:** 0.22 acres.

27   **Mark Swartz:** And the percentage in the unit?

1 **Anita Duty:** 0.275.

2 **Mark Swartz:** Is this well drilled?

3 **Anita Duty:** Yes.

4 **Mark Swartz:** And the permit number, do you have that? Or permit numbers?

5 **Rick Cooper:** EA 081.

6 **Mark Swartz:** Okay. When you got the permit, did you think it was 100% leased?

7 **Anita Duty:** Yes.

8 **Mark Swartz:** And you subsequently determined that we had this outstanding interest of  
9 0.02750%

10 **Anita Duty:** Yes.

11 **Mark Swartz:** And you immediately moved to pool?

12 **Anita Duty:** Yes.

13 **Mark Swartz:** Okay. We've subtracted Mr. Nelson, do you want to add anybody as a respondent  
14 today?

15 **Anita Duty:** No.

16 **Mark Swartz:** And you've indicated what the outstanding interest is, so can we assume that  
17 you've got over 99% owned or leased?

18 **Anita Duty:** We do.

19 **Mark Swartz:** Okay. And have you provided an Exhibit B, with regard to ownership?

20 **Anita Duty:** Yes.

21 **Mark Swartz:** And have you provided an Exhibit B3, which you've revised, to show the  
22 Commonwealth as the only respondent and then in Exhibit E, I imagining, to show the title  
23 conflict?

24 **Anita Duty:** Yes.

25 **Mark Swartz:** With regard to the wells and well cost estimates, how many wells are proposed or  
26 are going to be in this unit?

27 **Anita Duty:** Two.

1 **Mark Swartz:** And we talked about their locations. Correct?

2 **Anita Duty:** Yes.

3 **Mark Swartz:** And could you go over the well cost estimates that you've provided? Just in  
4 terms of total and so forth.

5 **Anita Duty:** For T55, the estimated cost is \$360,420.00. The estimated depth of 2,600 feet.  
6 T55A, estimated cost \$384,420.00 with an estimated depth of 2,600 feet.

7 **Mark Swartz:** Both of these proposed to be frack wells or are they frack wells?

8 **Anita Duty:** Yes.

9 **Mark Swartz:** And you noticed, in terms of mailing, you mailed to Mr. Nelson and you mailed  
10 to the VDOT, correct?

11 **Anita Duty:** Yes.

12 **Mark Swartz:** And they signed for their mail?

13 **Anita Duty:** They did.

14 **Mark Swartz:** And then you also, in your certificate of notice, you showed that you mailed to a  
15 number of coal owners?

16 **Anita Duty:** Yes.

17 **Mark Swartz:** And you did that because of the requirement of the Act?

18 **Anita Duty:** Correct.

19 **Mark Swartz:** And we want to make sure there's a Finding of Fact in this order, pooling this  
20 unit that you mailed to the coal owners and that you gave them an opportunity to, you know, a  
21 45-day opportunity to present evidence. Correct?

22 **Anita Duty:** Correct.

23 **Mark Swartz:** And in that 45-day period, have you received any evidence of either an  
24 agreement or a lawsuit?

25 **Anita Duty:** No.

26 **Mark Swartz:** And to the extent that time hasn't quite run yet, oh, it's the date of the hearing.  
27 Let's look at that. So you mailed August 19<sup>th</sup> to these owners and you notified them of the  
28 hearing today? Does the letter tell the coal owners that they are to show up today, no later than  
29 today, with the information?

1 **Anita Duty:** Yes.

2 **Mark Swartz:** So they were on notice of the hearing and that they needed to be here today?

3 **Anita Duty:** They were.

4 **Mark Swartz:** Okay, and obviously, they're not here and you didn't receive anything in the  
5 mail?

6 **Anita Duty:** Correct.

7 **Mark Swartz:** And I think that's it.

8 **Butch Lambert:** You finished, Mr. Swartz?

9 **Mark Swartz:** Yes.

10 **Butch Lambert:** Any questions from the Board?

11 **Donnie Ratliff:** Mr. Swartz, under the tract identification, there's a paragraph, and it may have  
12 already been there, always been there and I'd just never seen it before, it says "this title block is  
13 for general information purposes only. Does not reflect an analysis of severance deed and  
14 reflects no coalbed methane ownership and should not be relied on for such purpose." But we've  
15 got a certified map. It's stamped. What's that?

16 **Mark Swartz:** What, tell me where...

17 **Donnie Ratliff:** It's at the bottom of both pages under, just after the plat.

18 **Mark Swartz:** Oh, okay. In the tract IDs? Okay.

19 **Donnie Ratliff:** Has that always been there?

20 **Mark Swartz:** Yeah, well, it's been there for years.

21 **Anita Duty:** I think the purpose, as far as my understanding, is we didn't want anybody to think  
22 we were trying to determine who owned coalbed methane, like if there was a specific  
23 conveyance of CBM or oil and gas or something. We didn't want anybody to take from what we  
24 were showing, reflecting as ownership as a determination of anything. Determining ownership of  
25 CBM or...

26 **Paul Kugelman, Jr.:** Pre House Bill 2058 protection.

27 **Mark Swartz:** Well, it's more than that. That was the biggest problem because we were looking  
28 at leasing CBM and who might have it and we didn't want to indicate we were calling the  
29 conflict.

1 **Donnie Ratliff:** Okay.

2 **Mark Swartz:** But then there's the further problem, we have done our homework but it's our  
3 homework.

4 **Paul Kugelman, Jr.:** Right.

5 **Anita Duty:** Exactly.

6 **Paul Kugelman, Jr.:** Well, I guess the question the Board really has, and the Board can correct  
7 me if I'm wrong, is how's the Board to accept the petition if what you're providing is something  
8 they should be able to rely upon and granting the petition while at the same time, petition to pay  
9 something that says you can't use what we're providing you cause it may not be accurate?

10 **Mark Swartz:** No, we're saying its effect upon Coalbed Methane ownership, okay? We have a  
11 statute that now determines.

12 **Paul Kugelman, Jr.:** Right.

13 **Mark Swartz:** So what we're saying is we've identified the oil and gas owners; we've identified  
14 the coal owners, we've notified all of them; and we're asking you to pay these Coalbed Methane  
15 Owners because they're the gas claimants under the Act. So I guess it's, we're not saying our  
16 title says that, we're saying the Act says that.

17 **Paul Kugelman, Jr.:** Gotcha.

18 **Bruce Prather:** I think you're also certifying the plat by virtue of...

19 **Mark Swartz:** We are certifying the plat, it's the title information that's the tricky part here. You  
20 know, we are not saying that we have made a determination of Coalbed Methane ownership  
21 independent of the statute.

22 **Paul Kugelman, Jr.:** And that's the limitation of what you provided?

23 **Mark Swartz:** That's why we've always put that in. We didn't have a statute and we weren't  
24 going...

25 **Paul Kugelman, Jr.:** Oh, I understand now.

26 **Mark Swartz:** Now that we have the statute, it's not because we've determined, it's because the  
27 statute. If we know the coal owner and we know the gas owner...

28 **Paul Kugelman, Jr.:** Let me say this: the information you provided was accurate, but you're not  
29 making any calls with respect to who owns the Coalbed Methane?

30 **Mark Swartz:** Correct.

1 **Paul Kugelman, Jr.**: Even so, 45.1361.22 Column 2, gives us the answer.

2 **Mark Swartz**: It says that if you have gas claimants, and it says who they are

3 **Paul Kugelman, Jr.**: Right.

4 **Mark Swartz**: Its oil and gas, and you have coal claimants, and you [Indiscernible 17:16] to the

5 coal claimants and say, “what have you got?”...

6 **Paul Kugelman, Jr.**: Right.

7 **Mark Swartz**: You understand. That’s what we’re saying.

8 **Paul Kugelman, Jr.**: Right. Okay.

9 **Mark Swartz**: We’ve identified those players. Cause the problem is generally we’re looking at a

10 deed that says you own oil and gas, not that you own oil and gas, and Coalbed Methane.

11 **Paul Kugelman, Jr.**: Right.

12 **Mark Swartz**: The statute solves that.

13 **Paul Kugelman, Jr.**: Got it. It’s council’s advice that you find the procedure of that statement in

14 there. Council would also recommend maybe revising the statement slightly so that it’s not so

15 general in its application for future use.

16 **Mark Swartz**: Well, I’ve argued with my kind about this already. Okay. They want a belt and

17 suspenders and I was saying just wear a belt, but, I’ve already lost that argument. But, I’ll talk to

18 them again.

19 **Paul Kugelman, Jr.**: Could you put something in their subject too?

20 **Mark Swartz**: I’ll think about it. I understand what’s you’re suggesting and we’ll talk.

21 **Paul Kugelman, Jr.**: And that’s part of why I wanted it on the record here too, because I want

22 anybody who would come in later and look at this to say, “okay, what CNX is providing the

23 Board in the petition is accurate, but out of an abundance of caution, CNX is”...

24 **Mark Swartz**: Let me just point out to you how I read it, which may not be how you guys read

25 it, but I will certainly talk to my client about it, but it says, “it does not reflect an analysis of the

26 severance deed and its effect upon Coalbed Methane ownership”, so I mean, I think it is, it’s for

27 general informational purposes but then it tells you what it doesn’t do. So I think it’s kind of

28 specific.

29 **Paul Kugelman, Jr.**: I’d like to apologize see, because my computer is on the fritz, so I don’t

30 have the exact lineage in front of me. I read it over the Chairman’s shoulder and I’m just kind of

31 operating by my general impression.



1 **Mark Swartz:** But, you know, the first thing I can understand your concern, well, I'll read the  
2 whole thing. "This title block is for general informational purposes only", which I assume is  
3 what you're talking about.

4 **Paul Kugelman, Jr.:** Yes.

5 **Mark Swartz:** And then it says, "And does not reflect an analysis of the severance deed and its  
6 effect upon Coalbed Methane ownership and should not be relied on for such purpose." So I  
7 think, the first part of the sentence qualified...

8 **Paul Kugelman, Jr.:** The first part's the hang-up.

9 **Mark Swartz:** pretty specific, I think. But I'll talk to my troops about it.

10 **Paul Kugelman, Jr.:** The second part, council doesn't have any concern with, as a matter of  
11 fact, if it was just that...

12 **Mark Swartz:** I hear ya.

13 **Paul Kugelman, Jr.:** But to say that it is for general information purposes only, when it's being  
14 presented to the Oil and Gas Board for determination on disbursing royalties, that's a little bit  
15 more than general information that's being relied on for.

16 **Mark Swartz:** Let me just suggest one more thing, which is part of where we're coming from,  
17 as long as we're having this discussion. You know, there's a whole bunch of et al's in this tract  
18 ID.

19 **Paul Kugelman, Jr.:** Sure.

20 **Mark Swartz:** So, I mean, it is general. You know, it's like...

21 **Paul Kugelman, Jr.:** General is a malleable adjective.

22 **Mark Swartz:** Well, Linda K. Patten, et al, gas; Billy Charles Patton, et al, you know, it talks  
23 about 699 acre tracts but we're talking about an 80 acre unit, there's a lot of information in here  
24 that is really not specific enough. People should be careful, you know, when you're saying et al  
25 or et ux.

26 **Paul Kugelman, Jr.:** Right.

27 **Mark Swartz:** Anyway, I just wanted to make that observation. That we don't really identify,  
28 we don't reproduce our title in this tract ID.

29 **Paul Kugelman, Jr.:** Sure.

1 **Mark Swartz:** That being said, I'll talk to my troops, see if we can tighten that language up a  
2 little bit because I think the message we really do want to send is we are not solving that  
3 problem, the statutes are.

4 **Paul Kugelman, Jr.:** Right. But in presenting the petition to the Board, you're representing to  
5 the Board that the disbursement is appropriate, based on the information that you have.

6 **Mark Swartz:** That's a different thing. Our Exhibit E and Exhibit EE is title driven and its way  
7 more specific than our tract ID's.

8 **Paul Kugelman, Jr.:** Is this statement limited to tract ID's?

9 **Mark Swartz:** Yeah, it's the only place that it appears.

10 **Paul Kugelman, Jr.:** Okay.

11 **Mark Swartz:** Okay, I get it now. Okay. I understand. No, but our Exhibit E and Exhibit EE,  
12 those are title driven, those numbers are precise, every person is listed on those and that's not on  
13 us.

14 **Paul Kugelman:** Thank you and I apologize for asking that question...

15 **Mark Swartz:** No, that's okay. Well, I really didn't understand.

16 **Paul Kugelman, Jr.:** That's the nut we were looking to crack.

17 **Mark Swartz:** We're not telling you, rely on this but we don't stand behind it. No, we stand.

18 **Paul Kugelman, Jr.:** Exhibit E and EE are what answer the question that we're talking about.  
19 Thank you.

20 **Butch Lambert:** Okay, any other questions from the Board? [No response] Do I have a motion?

21 **Rick Cooper:** I guess the only thing I'd like to point out...

22 **Mark Swartz:** Oh, here we go [laughs]

23 **Rick Cooper:** Is that I would encourage that CNX Board group work with the production group  
24 because this wells been producing for three months and you're supposed to pool it before you  
25 produce it.

26 **Anita Duty:** I addressed that with Anita in the beginning.

27 **Donnie Rife:** So it's been producing before it was pooled?

28 **Mark Swartz:** I asked her when this well was drilled, what was the permitting people's  
29 understanding of title and they thought it was 100% leased. I mean, I asked her that right away.

1 **Donnie Rife:** Why do we have so many smoke and mirrors on this thing?

2 **Mark Swartz:** Say what?

3 **Donnie Rife:** Why are there so many smoke and mirrors on this? You've not got anybody  
4 identified, been producing three months before it was pooled, and you just showed us a  
5 plat...huh?

6 **Mark Swartz:** We permitted the well and at the time we permitted it, we thought it was 100%  
7 leased. We thought it was a voluntary unit. As soon as we found out we had this little tiny  
8 interest, we filed a pooling. We know we're not supposed to do that.

9 **Donnie Rife:** Well, how convenient.

10 **Bruce Prather:** It happens, that's all I'll say.

11 **Mark Swartz:** Well, it doesn't happen often.

12 **Bruce Prather:** But it happens.

13 **Paul Kugelman, Jr.:** As the entity that has the ownership interest that gave rise to requiring the  
14 requirement of forced pooling been damaged in any way?

15 **Mark Swartz:** Well, it's VDOT. Maybe.

16 **Paul Kugelman, Jr.:** Doesn't mean it's not subject to damage, sir.

17 **Mark Swartz:** No.

18 **Paul Kugelman, Jr.:** I mean I get that it, but still, never mind. I'm just trying to give CNX an  
19 opportunity to come in and say, you know what, this is out of the ordinary course of business.  
20 Yes, we didn't catch this and yes, we responded appropriately. Which I'm not getting and that's  
21 a little bit disappointing. And then after that, I'm asking if the person or the entity is now being  
22 forced pooled, was damaged in any way and I can't get a no to that.

23 **Mark Swartz:** The problem is, we have, the people that were going to be force pooled have  
24 since got a lease from one of the people, okay?

25 **Paul Kugelman, Jr.:** Right.

26 **Mark Swartz:** Which I think is evidence of we actually care and pay attention and tried, when  
27 we found this claim, to try to get a lease.

28 **Paul Kugelman, Jr.:** Sure.

29 **Mark Swartz:** The person we don't have a lease from and the only person affected by this is  
30 VDOT and they are in conflict with the guy, Nelson that we got the lease from, so I don't even

1 know at this point there's a title conflict, we don't know who owns it. So the answer to your  
2 question about VDOT, VDOT may turn out to not have an interest. No that doesn't mean we  
3 should drill wells, you know, if we have an outstanding interest, then they need to be pooled.  
4 That's a completely different issue.

5 **Paul Kugelman, Jr.:** If there's a conflict of the ownership interest though, doesn't that take  
6 those royalties and require them to the escrow?

7 **Mark Swartz:** We didn't know about this outstanding interest at the time.

8 **Paul Kugelman, Jr.:** Right. Oh, I see.

9 **Paul Kugelman, Jr.:** Have any royalties been paid on production?

10 **Anita Duty:** The royalties are paid two months behind so it would probably be, the first payment  
11 would be this month, probably.

12 **Paul Kugelman, Jr.:** I think that's easy to fix.

13 **Mary Quillen:** Did you get a lease from this Nelson, is that what you said?

14 **Mark Swartz:** I think we have a lease from Mr. Nelson.

15 **Mary Quillen:** And Mr. Nelson was under the impression that he owned it and CNX was under  
16 the impression that he owned it?

17 **Donnie Rife:** VDOT, I think it was.

18 **Mark Swartz:** The interest turned up after the permit.

19 **Anita Duty:** It was always showing on the permit.

20 **Paul Kugelman, Jr.:** Okay. I just wanted to make sure.

21 **Anita Duty:** And now it's an or with VDOT. Well, it always was an or with VDOT. It didn't get  
22 recognized that that needed to be pulled.

23 **Mary Quillen:** So how did VDOT get involved in this? Did you have some documentation or  
24 something?

25 **Anita Duty:** My understanding is that whenever there is an or, like there is a, say Raymond  
26 Nelson or VDOT, there is a, I guess a, I'm trying to think of the word. In one section of the deed,  
27 they used the word convey and in the other section of the deed, they used right-of-way. So those  
28 two conflicting languages cause...

29 **Mary Quillen:** Oh, so this develops from the conveyance highway right-of...

1 **Anita Duty:** Right-of-ways...

2 **Mary Quillen:** Okay. Now I understand how they got involved in it. So they are saying they  
3 owned it when the deed says conveyed?

4 **Anita Duty:** The deed has conflicting language, because it says convey in one section and it says  
5 right-of-way in another. So is it a conveyance or is it a right-of-way. So that's why we show  
6 those as or's.

7 **Mary Quillen:** Okay. Okay. I see now.

8 **Donnie Rife:** If this is with VDOT, it's right-of-ways.

9 **Mark Swartz:** Not necessarily.

10 **Anita Duty:** But the language in the deed says convey, and whenever it say convey, that means  
11 you actually deed the property away; and then in another section of the deed, the same deed, it  
12 says right-of-way. So the conflicting language is what causes us to put it in as an or.

13 **Mark Swartz:** We pay royalties regularly for VDOT. There are royalties that they have an oil  
14 and gas interest under it and that we, it's been determined...I mean, because these things that are,  
15 there are a ton of these conveyances, and some of them, they're determined to have the oil and  
16 gas ownership and a lot of them they are not. And then there's like this, where you don't know.

17 **Mary Quillen:** Okay, so, so you have to get...

18 **Mark Swartz:** What happened here, when this was permitted by Jerry and Bev and State, they  
19 thought it was 100% leased and they were wrong. This little piece of, whatever it is, 50% was  
20 not leased. We went out and got a lease from Nelson, we can't get a lease from VDOT and that's  
21 not a bad thing, we just don't do that. We wind up with forced pooling. So that's what happened.  
22 And it was permitted and went in production in June and here we are in September. There may  
23 have been royalty checks gone out.

24 **Anita Duty:** The first checks wouldn't go out until, like, this month. Like next week.

25 **Mark Swartz:** But it's been producing. I mean, you know, it happens, and it shouldn't have,  
26 but...

27 **Mary Quillen:** You were operating on the best available information that you had.

28 **Mark Swartz:** They made a mistake. I mean, they were wrong. It wasn't 100% leased, I mean  
29 there's no way around that.

30 **Bruce Prather:** Whoever abstracting your contract made a mistake.

1 **Mark Swartz:** I don't know if our title people had the right answer and our permitting people  
2 had the wrong answer or what it was, but somebody made a mistake and it shouldn't have  
3 happened. I mean, it's not the first time it's happened. It doesn't happen very often. I've been  
4 doing this for a long time, but it happens every now and then.

5 **Butch Lambert:** We've seen it before.

6 **Mark Swartz:** And you know, we're not happy about it but we are here pooling instead of trying  
7 to hide from it.

8 **Bruce Prather:** A lot of these things, these people say they have the interest because they had  
9 the interest prior to the road going in there, and so they say we own it all and they don't realize  
10 when they signed the right-of-way agreement with VDOT, they gave away their rights to the  
11 minerals under that road.

12 **Mark Swartz:** Except here. Mr. Nelson probably thinks he has a claim and VDOT is oblivious, I  
13 mean, we're the ones that caused the problem because we looked at the title. I'm sure he, you  
14 know the guy get a lease from, thinks he owns it. Because he's thinking, all I gave them was a  
15 right of way for this road and I should have that, but you know, when we look at the instrument  
16 then we're concerned with VDOT's [Indiscernible 30:02] which is why we're here. If we didn't  
17 think VDOT had a claim, we wouldn't be here. We've got a lease from him now. But it was  
18 clearly a mistake at that point, by someone, because we had a tiny, outstanding interest that we  
19 should have dealt with.

20 **Bruce Prather:** Okay. Any other questions from the Board? Mr. Ratliff?

21 **Donnie Ratliff:** Under the lease though, it's pooling the Oakwood Coalbed Methane unit, but  
22 one of the wells is outside the window, the drilling window.

23 **Mark Swartz:** There's a distance requirement and the Oakwood rules allow Mr. Cooper to give  
24 us exception automatically so we don't have to come through you all.

25 **Anita Duty:** And the exception, I think that was granted under the permitting.

26 **Rick Cooper:** That would be granted under the permitting process when T55, is it A? When that  
27 permit is submitted. When that application is submitted.

28 **Anita Duty:** It should be on the...

29 **Mark Swartz:** It's on the revised plat. The Oakwood field rules a specific authorization for...the  
30 original Oakwood field has a revision that allows the DGO to do that. There are some instances  
31 where we have to come in front of the Board because we don't have that, but the Oakwood...if  
32 it's okay with him.

33 **Donnie Ratliff:** Okay.

1 **Butch Lambert:** Any other questions from the Board? [No response] Do I have a motion?

2 **Donnie Ratliff:** Motion to approve.

3 **Donnie Rife:** Second, Mr. Chairman.

4 **Butch Lambert:** I have a motion and I have a second. Any further discussions? [No response]  
5 All in favor, signify by saying yes.

6 **Board:** Yes.

7 **Butch Lambert:** Opposed, no. [No response] Thank you, Mr. Swartz. That one is approved.

8 **Item Number 16**

9 **Butch Lambert:** A petition from CNX Gas Company, LLC, for pooling under Oakwood  
10 Coalbed Methane Gas Field I. Unit T54. Docket Number VGOB 16-0920-4097. All parties  
11 wishing to testify, please come forward.

12 **Mark Swartz:** Mark Swartz and Anita Duty.

13 **Butch Lambert:** You may proceed, Mr. Swartz.

14 **Mark Swartz:** Anita, state your name for us, please.

15 **Anita Duty:** Anita Duty.

16 **Mark Swartz:** Are you here on behalf of CNX Gas Company, LLC, on this pooling?

17 **Anita Duty:** Yes.

18 **Mark Swartz:** And we did this before but let's go through it again. CNX Gas Company is a  
19 Virginia Limited Liability Company?

20 **Anita Duty:** Yes.

21 **Mark Swartz:** Authorized to do business in the state?

22 **Anita Duty:** Yes.

23 **Mark Swartz:** Registered with DMME and the DGO?

24 **Anita Duty:** Yes.

25 **Mark Swartz:** And they have a blanket bond on file with regard to their well operations?

26 **Anita Duty:** Yes.

27 **Mark Swartz:** Did you notify people by any means that we were going to have a hearing today?

1 **Anita Duty:** Yes.

2 **Mark Swartz:** How did you do that?

3 **Anita Duty:** We mailed by Certified Mail Return Receipt Requested on August 19, 2016 and  
4 published the notice and location map in the Bluefield Daily Telegraph on August 24, 2016.

5 **Mark Swartz:** And do you want to add any people to the list of folks that are going to be  
6 respondents that are set forth in the application or the notice?

7 **Anita Duty:** No.

8 **Mark Swartz:** Do you want to dismiss any of them?

9 **Anita Duty:** We did have a revision but I think it's loaded to E-Forms. We dismissed Grat Cole.

10 **Mark Swartz:** So the last person in Paragraph 7 would have been the dismissal and it was  
11 loaded in E-Forms because I pulled it off.

12 **Anita Duty:** Okay.

13 **Mark Swartz:** I have to find that page. Let's see if the Board members have it. It think it is, it's  
14 Page 20 of 40 of my pdf and it's an Exhibit B2 and it references Tract 1L and it's a dismissal of  
15 Grat B. Cole. 0.05 acres. His interest in unit and it's because he was leased. So it did get  
16 uploaded.

17 **Anita Duty:** Okay.

18 **Mark Swartz:** Other than Mr. Cole, do you want to dismiss anybody else?

19 **Anita Duty:** No.

20 **Mark Swartz:** What kind of unit is this?

21 **Anita Duty:** Oakwood 80.

22 **Mark Swartz:** Okay, how many wells are proposed?

23 **Anita Duty:** Two.

24 **Mark Swartz:** And are they both going to be fracked wells?

25 **Anita Duty:** Yes.

26 **Mark Swartz:** Have they been permitted?

27 **Anita Duty:** I don't think so.



1 **Rick Cooper:** No, this is the one we're having the hearing on this afternoon.

2 **Anita Duty:** Okay.

3 **Mark Swartz:** I was going to see if you would go there because I knew that. [Laughs] Okay.

4 Have you provided well cost estimate information?

5 **Anita Duty:** Yes.

6 **Mark Swartz:** For both of the wells?

7 **Anita Duty:** Yes.

8 **Mark Swartz:** And as we previously discussed, one of them is within, let me look at that here.

9 This one we've got, in the revised plat, that's the T54A as in the drilling window in sort of the

10 Southeast corner and the other well, which is T54 is to the North of the drilling window but still

11 within the window, and again to the East. Correct?

12 **Anita Duty:** Yes.

13 **Mark Swartz:** And I previously asked you, but just to reconfirm, they are frack wells?

14 **Anita Duty:** They are.

15 **Mark Swartz:** And, what percentage are you seeking to pool and with reverse math, what have

16 we acquired to move forward?

17 **Anita Duty:** We're seeking to pool 15.0625% and we have leased 84.9375%.

18 **Mark Swartz:** Collectively our respondents have that percentage?

19 **Anita Duty:** Correct.

20 **Mark Swartz:** And have you provided an Exhibit B, which lists all the owners?

21 **Anita Duty:** Yes.

22 **Mark Swartz:** We've already talked about the Exhibit B2, which dismisses Mr. Cole?

23 **Anita Duty:** Yes.

24 **Mark Swartz:** And we would have an Exhibit B3, which identifies all the people you are

25 seeking to force pool?

26 **Anita Duty:** Yes.

27 **Mark Swartz:** And their interest in the unit?

1 **Anita Duty:** Yes.

2 **Mark Swartz:** With regard to the well cost, could you tell the Board what you're well cost  
3 estimates indicate, with regard to these two proposed wells?

4 **Anita Duty:** For Well T55, the estimated cost is \$389,080.00. The estimated depth is 2,600 feet.  
5 T55A is \$383,080.00 with an estimated depth of 2,600 feet.

6 **Mark Swartz:** And is there an escrow requirement?

7 **Anita Duty:** Yes.

8 **Mark Swartz:** And it's because of a title conflict?

9 **Anita Duty:** It is.

10 **Mark Swartz:** And have you provided an Exhibit B, with regard to that?

11 **Anita Duty:** Yes.

12 **Mark Swartz:** Did you mail, well you've already talked about that. You mailed and published,  
13 correct?

14 **Anita Duty:** Yes.

15 **Mark Swartz:** Did you also mail to potential conflicting coal owners?

16 **Rick Cooper:** We did.

17 **Mark Swartz:** Okay. And have you provided your certificates with regard to them?

18 **Anita Duty:** Yes.

19 **Mark Swartz:** And did they all either sign for their mail or have it hand delivered to them?

20 **Anita Duty:** Yes.

21 **Mark Swartz:** And did you indicate to them in the mailing that they needed to either come today  
22 or provide evidence before today, of either an agreement or some kind of litigation proceeding?

23 **Anita Duty:** We did.

24 **Mark Swartz:** And have you received anything?

25 **Anita Duty:** No.

26 **Mark Swartz:** And are you asking that the Board make that factual determination in its order  
27 and dismiss these people as conflicting claimants?

1 **Anita Duty:** Yes.

2 **Mark Swartz:** Or determine that they're not conflicting claimants?

3 **Anita Duty:** Yes.

4 **Mark Swartz:** And is it your opinion that drilling two frack wells in this unit and the locations  
5 that they're planned within the drilling window is a reasonable development plan for this  
6 Coalbed Methane Unit?

7 **Anita Duty:** Yes.

8 **Mark Swartz:** And is it your opinion that based on the title work and saying acquisition efforts  
9 of the operator, that if you combine the interest that you've acquired by lease or ownership with  
10 the pooling order, the pooling order described in the pleadings here today, that the correlative  
11 rights of the people having claims in this unit will be protected.

12 **Anita Duty:** Yes.

13 **Mark Swartz:** That's all I have.

14 **Butch Lambert:** Ms. Duty, just to correct one thing, I think you are testifying that the well  
15 numbers were T55. I believe we were talking about T54 and T54A.

16 **Anita Duty:** Oh, I'm sorry. I didn't, they're T54 and T54A.

17 **Butch Lambert:** What's the difference in your two plats, other than one not showing T54A?

18 **Anita Duty:** That's it.

19 **Butch Lambert:** That's it?

20 **Anita Duty:** Yes, we included two costs. We wanted to make sure the plats matched.

21 **Butch Lambert:** That's the only difference I could find.

22 **Anita Duty:** Yeah, that's it.

23 **Butch Lambert:** Any other questions from the Board? [No response] Anything further, Mr.  
24 Swartz?

25 **Mark Swartz:** No.

26 **Butch Lambert:** Do I have a motion?

27 **Donnie Ratliff:** Motion to approve.

28 **Donnie Rife:** Second, Mr. Chair.

1 **Butch Lambert:** I have a motion and I have a second. Any further discussion? [No response] All  
2 in favor, signify by saying yes.

3 **Board:** Yes.

4 **Butch Lambert:** Opposed, no [No response] Thank you, Mr. Swartz. That one is approved.

5 **Item Number 20**

6 **Butch Lambert:** A petition from CNX Gas Company for prior to provide the Board explanation  
7 their extension request for wells identified in the large handout that was given.

8 **Mark Swartz:** Well this is...the handouts are getting smaller [laughs].

9 **Butch Lambert:** You may proceed, Mr. Swartz.

10 **Mark Swartz:** Is there a recap? I don't have a lot to tell you, at least about this, but we kind of  
11 recap where we were and where we are today and then let you, sort of, digest it. We just get  
12 some other things but let's sort of take it in pieces. When we were here in June, oaky, we had a  
13 really lengthy spreadsheet, which addressed 450 some units. We had a book that addressed that,  
14 and then we asked for some extensions, with regard to two different kinds of units, and we asked  
15 for a 60-day extension, with regard to certain units and we asked for 90-day extension, with  
16 regard to certain other units. And what I've done, although this has been delayed and I think we  
17 missed an August meeting, if I'm not mistaken, but what I've done, is I have taken the extension  
18 units, the two groups of extension units from July 21<sup>st</sup> through, actually Friday, possibly  
19 Monday. Because if they're less we can kind of snapshot them a little better, to tell you where we  
20 are and what, if any, further assistance we need. If you look at the blue thing, which is the 60-  
21 days, yes, what we have done is we have listed by identification, unit identification, the 45 units  
22 and there's a summary at the end and I've got a tract summary but I also have a unit summary.  
23 You know, how many units are in the different columns, and so we had 45 units in this 60-day  
24 extension category. The first column is we've completely filed and are done with 5 of those  
25 units. Okay? In the time that's passed since the 21<sup>st</sup>. Then the next column is we were asking to  
26 try to allow some additional time to pay people that we felt like we could get paid. And so the  
27 next column is, we partially filed applications for petitions for disbursement and we've got a  
28 fairly number of those and we filed disbursement requests for 32 tracts, partial. Effecting 26 of  
29 45 units. Then we continued to have issues, with regard to not getting information back, like the  
30 W9's and other things, you know, affidavits from gas claimants, and this is the summary of, and  
31 you will notice in a number of these, we have actually partially filed a tract. Like, for example,  
32 take AX99, you know, we've partially filed that but we weren't able to file other pieces of it  
33 because we don't W9's or other information back, so we identified how many tracts and how  
34 many units of these 45 that continue to be a problem and there's 30 units that you've got the  
35 we'll come back information that's preventing us from moving forward. Then we've got a gas  
36 title conflict and as you'll recall we had several of those today, that's something where there  
37 either needs to be a lawsuit or there is a lawsuit and it's not resolved and in this 45 unit category,

1 we've got that column and that totals three tracts and three different units, but you know, we  
2 haven't been able to deal with. Unknown gas claimants, we have two tracks in unresolved  
3 heirship at an impasse devolve that we had, although we tried to separate the heirships out when  
4 we were here in June, turned out that we had a couple of heirships that we couldn't resolve in  
5 the 45/60 day extension; 45 unit, 60 day extension category. There's two units, two tracts there.  
6 We did have a situation, AX100, where we had recently resolved an heirship and we were  
7 hoping to make a disbursement there, and obviously we weren't able to because we have gas  
8 claimants, AX1C, oh that's the one, I'm going to come back to that. Let's see the second column  
9 from the right hand side. And then the last column is reasons beyond our control, we're waiting  
10 for an order or something else. There are eight tracks and seven units. The column where I was  
11 stumbling around involving AX100, we would like another 60 days. So out of these 45 units, we  
12 have one situation that we think we can make some further payments, and we would like an  
13 extension on AX100, but out of the 45 units, we are in a position where we're done with 44 of  
14 the 45 and we've accomplished what we can. Okay?

15 **Paul Kugelman, Jr.:** When you say done, you mean you've exhausted all possibilities you  
16 have?

17 **Mark Swartz:** At the moment, at the moment. Because, that's a good point. We're probably,  
18 well we do continue to get stuff in, and that's happened for 20 years. And as W9's come in, as  
19 affidavits come in, as people turn up, we are going to continue to file but unless something in the  
20 control of a third party occurs, we are done.

21 **Mary Quillen:** You wanted an extension for how many days on this one?

22 **Mark Swartz:** Just the one. 60 days.

23 **Mary Quillen:** 60 days.

24 **Mark Swartz:** For AX100. And the other ones, we're telling you we have finished for the  
25 moment. Unless something comes in from a third party, we're done.

26 **Mary Quillen:** Okay.

27 **Mark Swartz:** And obviously, not cutting off questions, but, the sort of weird color, okay, that  
28 involves the heirship units that we asked for additional time on at the status updates of the units  
29 and tracts for which we had the 90-day extension, and there were 36 units in that groups. And  
30 this reports what, the same sort of report, the tracts that we were able to completely file, six tracts  
31 and four units, partially filed three tracts and three units. We've got some gas claimants failing to  
32 provide information and a handful of four units; gas title conflict, which again is probably a  
33 litigation issue in four of the units; and then we've concluded that although we continue to work  
34 these heirships, the ones that are in that column that are X'd, we're at an impasse. We have dead  
35 ended those heirships. I'm going to come back to the additional 60-day extension. We've got  
36 second to the last column beyond reason of control, 14 tracts, 6 units, in litigation, which I guess

1 is beyond our control as well. It would be one unit in the last column and then out of these 52  
2 tracts, 36 units, we are asking for a 60-day extension with regard to BC121 and BD122, a total of  
3 four tracts and my recollection is we need to amend a supplemental order to get the percentages  
4 right before we can make disbursements. So those 36 units, 52 tracts, the report is, this is what  
5 we have accomplished. The only thing, at the moment, we can do, in addition to what we've  
6 already completed is get the supplemental orders squared away on those two units so we can  
7 make a further disbursement. We're asking for 60-days to do that. So our report, basically, is in a  
8 nutshell, of the 453 units that we've been working on for a long time, we are now at a point  
9 where we have a couple of units that we have, which I've just identified, which we would like a  
10 little bit more time to get a couple more people paid and then as information comes in, we would  
11 like an acknowledgement that we can operate in the ordinary course, processing stuff as it comes  
12 in, but that we're don't with this sort of massive undertaking on report.

13 **Paul Kugelman, Jr.:** Can I just ask a couple of clarification questions, please? And this is just  
14 for me and it should take long. What do you mean by track completely filed and track partially  
15 filed?

16 **Mark Swartz:** 100% of the tract as opposed to, it came out of escrow. It's done.

17 **Paul Kugelman, Jr.:** Okay, so these are, a tract completely filed is one where the escrow  
18 account is closed.

19 **Mark Swartz:** For that tract. It's completely paid out.

20 **Paul Kugelman, Jr.:** For that tract. Okay.

21 **Mark Swartz:** And it may mean that the unit is zeroed out too.

22 **Anita Duty:** Most of the time it's an heirship tract, so you may be able to pay 10 people but then  
23 five people didn't send their stuff in, so that's going to be shown as a partially filed.

24 **Mark Swartz:** But the difference is the tract actually got paid in full and disappeared from  
25 escrow.

26 **Butch Lambert:** But the tracts that are partially filed, there should be continuing activity. We  
27 would expect activity on those quicker than we would the other.

28 **Mark Swartz:** One would hope that some of those people, except there are, and we've had this  
29 discussion before, there are people that have point blank told us, we're never going to get a W9  
30 from them, so some of the things that we sort of common sense think, you know, would go away,  
31 maybe it won't, but in general, I think it's reasonable to assume, you know, in that gas claimant  
32 failed to provide information column in both of these, particularly in the 60-day order, a ton of  
33 those, we're going to get stuff in, and we're going to process it because we're the operator.  
34 What? Anita says, every day is something else. And we try to run this through, I know it was  
35 through Friday but then there were some revisions over the weekend, so I think these two charts

1 are pretty much through Monday morning, yesterday. Whereas before, we cut it off because it  
2 was so big. We cut it off a week or ten days ahead.

3 **Butch Lambert:** Any questions or discussions from the Board?

4 **Bruce Prather:** Mark, on your 60-day additional on these four, I noticed you don't have any  
5 other, what their problem are. Are these ones in which you might have legal problems; these four  
6 that you want the extension on.

7 **Mark Swartz:** No, I think, let me find that.

8 **Bruce Prather:** You say you want the extension.

9 **Mark Swartz:** I've got notes on those if you give me one minute, I can give you a more specific  
10 answer. Did we file BC121 on Friday? Did we miss that?

11 **Anita Duty:** I think that's in E-Forms. I think we fixed that. I think that one's good.

12 **Sarah Gilmer:** BD121?

13 **Mark Swartz:** BC121.

14 **Sarah Gilmer:** BC121.

15 **Mark Swartz:** Mr. Prather, we filed BC121 on Friday and it looks like we didn't update that.  
16 We don't actually need that. Okay?

17 **Bruce Prather:** Okay.

18 **Mark Swartz:** So that problem we solved. So we're down to BD on the 90-day extension sheet  
19 and we're asking for 60 more days. The BD122, let me find my notes on that. And that one we  
20 have done additional heirship work and the heirship has changed from our additional work. And  
21 the supplemental order that's on file with you all, needs to be revised because the heirship has  
22 changed, so we can't petition without coming back to the Board to ask for that to be revised so  
23 we're going to have to file, maybe be able to get away with just filing a supplemental order and  
24 having it kind of ministerial dealt with but if we have to come back in front of the Board to re-  
25 pool, we need some time. But that's the reason for that, we've done more work on BD122.

26 **Anita Duty:** And this isn't the only one we've done this with. We've had some recently where  
27 we filed the supplemental order, our accounting group makes the updates and we make a deposit.  
28 Sarah recognizes that the deposits been made, then we can file the disbursement. So this is not  
29 unusual that we need to make those corrections before we can file.

30 **Mark Swartz:** Now the other one, the AX100, let me look and see. Well there are pieces of it  
31 that are apparently complete but the supplemental orders need to be revised because, I mean,  
32 that's what the notes telling. So it's the same issue on AX100, the similar issue, we've revolved

1 pieces of the heirship but then now it's not consistent with the supplemental that we had  
2 previously filed so we've got the same issue on AX100 on the other chart.

3 **Mary Quillen:** It seems that the heirship seem to be the ones that are the most difficult. If I'm  
4 reading this right.

5 **Mark Swartz:** In general, yes. And frankly, the most intractable. I mean there's a bunch of them  
6 that's just...

7 **Mary Quillen:** Right.

8 **Butch Lambert:** Mark, in your estimate, how many of these were the notice issued? Does that  
9 fall under the reason beyond our control?

10 **Mark Swartz:** No.

11 **Anita Duty:** You mean like the coal notice?

12 **Butch Lambert:** No, the notice that not picked up or it's in training. Those kinds of things.

13 **Anita Duty:** No because then if it's on that section, it's not even been filed yet. This is where  
14 we've not filed any. It's not at that stage.

15 **Butch Lambert:** Any more discussion from the Board? Do we have a motion on the request for  
16 an extension? We'll break this up into a couple of different things. First of all, we need a motion  
17 on request for extension on those units identified by Mr. Swartz?

18 **Donnie Rife:** Motion for approval on those four units for an extension of 60 days, Mr. Chairman.

19 **Mark Swartz:** We're down to three, aren't we?

20 **Donnie Rife:** Five?

21 **Butch Lambert:** I think it's three.

22 **Mark Swartz:** Its three now. We're down to three.

23 **Butch Lambert:** All three of those, you're asking for 60 days?

24 **Mark Swartz:** Say what?

25 **Butch Lambert:** All three of those, you're asking for a 60-day extension?

26 **Mark Swartz:** Correct. So that's AX100, we would like a 60-day extension; then the two tracts  
27 in...

28 **Butch Lambert:** BD122?



1 **Mark Swartz:** Then the two tracts in BD122. So it's actually three tracts and two units.

2 **Butch Lambert:** So I have a motion. Do I have a second?

3 **Donnie Ratliff:** Second.

4 **Butch Lambert:** Any discussion? All in favor, signify by saying yes.

5 **Board:** Yes.

6 **Butch Lambert:** I guess the second motion is just to allow CNX to continue normal work on the  
7 rest that can't be resolved at this point?

8 **Mark Swartz:** That is the request that we're making. That we just continue to operate due  
9 diligence with regard to that.

10 **Paul Kugelman, Jr.:** So are you just moving for a general continuance and to bring them up?

11 **Mark Swartz:** I don't think we need a continuance, just an acknowledgement that we're done. I  
12 think you wanted us to come back to you and say that we have done what we were supposed to  
13 do and we have done that. Now we're telling you we finished the House Bill housekeeping, with  
14 regard to the escrow. We're done. And now, we are just going to continue to operate, we'd like  
15 your permission to continue to operate in the ordinary course as stuff comes in; as we review  
16 these files and find stuff, we will petition further disbursements but that we're not under some  
17 deadline to come back do something.

18 **Butch Lambert:** Could we ask in our motion just for a quarterly update?

19 **Mark Swartz:** That would certainly be very reasonable. We were going to do an internal review  
20 on a probably quarterly or monthly basis anyway so that would certainly work. Just kind of  
21 what's happened.

22 **Bruce Prather:** Mark, did that book have anything putting a deadline on when these things  
23 would be done?

24 **Mark Swartz:** Yes, and that's...

25 **Bruce Prather:** If there's something in there that says we can't go beyond a certain period of  
26 time, then we're going against the law. If that's the case.

27 **Mark Swartz:** Point well taken, but I think what we have tried to do as a company is tried to  
28 petition before time expired for extensions. You know, and the extensions got fewer and fewer,  
29 you know, in terms of, so other than the couple of extensions that we've asked for and that  
30 you've allowed us, we don't need an extension so you're not going to be extending some  
31 timeframe under the law, except for that specific three tracts that we just talked about. That you  
32 have the power to do.

1 **Bruce Prather:** We're waiting on court decisions.

2 **Mark Swartz:** Well those, there's nothing anybody can do.

3 **Bruce Prather:** There's nothing you can do but did they go beyond the step [Inaudible].

4 **Mark Swartz:** There's an exception in the statute, I don't want to spend too much time on that  
5 but there is an exception in the statute for categories, okay? And these columns in general sort of  
6 tract the categories that we were allowed to avoid closure, and you were allowed to avoid  
7 closure, so beyond your reasonable control is actually in the statute. Gas claimant falls to provide  
8 information is actually, so that's why we categorized it this way. To kind of try to make it fit  
9 within the statute but I think your question was, "Do we as a Board, are we beyond some time  
10 limit imposed by the statute?"

11 **Bruce Prather:** Yeah, exactly.

12 **Mark Swartz:** My answer to that would be we have always tried to timely ask for extensions  
13 and addressed those with you all, and I believe we have always come within your authority to do  
14 that. We're down to one extension involving three tracts and we're not asking for any more  
15 extensions; we're not asking for blank. We're done. Other than, if you want to get ... I think  
16 that's just in your general authority. Forget the House Bill, to ask us to come back just like you  
17 asked the bank to come back, so.

18 **Butch Lambert:** I think if we allow them just to continue working on, that we would have to  
19 have an update.

20 **Bruce Prather:** Yeah, definitely.

21 **Mark Swartz:** On a quarterly basis, or something.

22 **Bruce Prather:** Yeah.

23 **Bruce Prather:** So, I'll make that motion.

24 **Rick Cooper:** So I've got one question. Do we need to continue these three or four requests for  
25 60 days and put them back on the docket?

26 **Butch Lambert:** Three or four requests.

27 **Rick Cooper:** Actually, three or four well that they ask a 60 day extension on.

28 **Butch Lambert:** We've done voted and give them a 60 day extension.

29 **Rick Cooper:** I mean do we need to put it back on the docket?

30 **Butch Lambert:** So they'll have to come back in 60 days.

1 **Sarah Gilmer:** So they won't be part of the quarterly report?

2 **Butch Lambert:** No.

3 **Anita Duty:** We won't have filed them.

4 **Butch Lambert:** Two different things.

5 **Butch Lambert:** No, there's two things we're voting on. One giving them an extension on those  
6 three tracts they've identified, and the second one that we just made was to allow them to  
7 continue work on those that they've gone as far as they've gone, but they have to come back for  
8 reports.

9 **Mark Swartz:** Just to do course operations and come back for a quarterly review and tell you  
10 what's going on?

11 **Butch Lambert:** In other words, we would see these sheets updated or...

12 **Mark Swartz:** Something like that, right. Probably what you would see more than that is, this is  
13 the good stuff as opposed to, this is what came in since we were last here and what we've done,  
14 is I think.

15 **Butch Lambert:** Does everyone understand the second motion made by Mr. Ratliff? Okay any  
16 further discussions now, all in favor, signify by saying yes.

17 **Board:** Yes.

18 **Butch Lambert:** Opposed, no? [No response] Thank you, Mr. Swartz. I think we've reached...

19 **Mark Swartz:** We have one more thing we need to talk about. Well, and it's on the docket. We  
20 need to come back with having had a chance to talk probably to your council and Rick, to get a  
21 format for publication because the statute requires that and I think we need to reach some kind,  
22 and I don't want it to slip.

23 **Paul Kugelman, Jr.:** A format for publication?

24 **Mark Swartz:** There's a publication requirement in the statute, now that we're done.

25 **Paul Kugelman, Jr.:** Right.

26 **Mark Swartz:** To tell people this is what you need to do.

27 **Paul Kugelman, Jr.:** Oh, okay.

28 **Mark Swartz:** So we need, and it's the publication requirement. It's four weeks, it's a lot of  
29 money, it's a lot information. I think we need, I don't want to just do something and then come

1 back to the Board and you look at it and say well why didn't you do this or why didn't you do  
2 that. I would like to have some dialogue and...

3 **Paul Kugelman, Jr.**: Can I make a suggestion?

4 **Mark Swartz**: Sure.

5 **Paul Kugelman, Jr.**: And I'm happy to have the dialogue. I think it may be prudent, because  
6 we're you know, where council is absent the people parish, but where there's a multitude of  
7 council, good things happen. Perhaps we have the dialogue, come in with a proposed notice and  
8 let the Board look at it.

9 **Mark Swartz**: Absolutely, no, that's what I have in mind.

10 **Paul Kugelman, Jr.**: Oh, okay.

11 **Mark Swartz**: No, not that we're going to agree on it but I think you need to put this on, well, I  
12 would recommend that you do come back on a piece of, which is what Sarah's asking about, you  
13 know, that we come back on a piece of this docket item that talks about a publication and going  
14 forward and that we have a dialogue in the meantime so that we come back to you with "this is  
15 what we have in mind. Do you have heartburn with that?" "Do you think we should do this? Do  
16 you think we should do that?" Before we go on with it.

17 **Butch Lambert**: If you guys want to work it out, then we can put it back on the docket on the  
18 Board's own motion.

19 **Mark Swartz**: That piece of it. Cool.

20 **Rick Cooper**: That was my original question. Yes.

21 **Mark Swartz**: Okay. Just want to make sure we stayed on that.

22 **Paul Kugelman, Jr.**: I'm glad we were able to answer all those questions with a one fell  
23 response.

24 **Item Number 21**

25 **Butch Lambert**: Next item on the agenda is the Board will receive an update from the Board  
26 and division activity from staff.

27 **Rick Cooper**: Couple things I want to bring up. I know it was an issue that we had Evans Energy  
28 that transferred their wells over to Magnum Hunter and they were backlogged a little bit on  
29 depositing money into the account. We have finally resolved those issues and there's only two  
30 Magnum Hunter escrowed accounts and so they have put their money in, we have established the  
31 accounts and got the accounts caught up so we did get that taken care of. The second issue that I  
32 had brought up the las Board meeting is the escrow upload with EQT. We can't have all those

1 done. We have made some progress on those and we're trying to resolve those issues, but in the  
2 event we don't make too much progress, they will be here next month and we can talk to them  
3 personally why we're not getting better response, but their pretty complicated and it's a slow  
4 grind and just like these we're going over here, they're pretty complicated.

5 **Butch Lambert:** Are they going to be here in...

6 **Rick Cooper:** They should be here in October.

7 **Butch Lambert:** Will they disburse an item or?

8 **Rick Cooper:** Well, I've told them that we would talk about this item in addition. They've got  
9 two disbursements coming up in October.

10 **Butch Lambert:** Then I would suggest that if they don't want to appear on this topic on uploads,  
11 that you put it on the docket in the Board's own motion and we'll deal with it at that time.

12 **Rick Cooper:** We will do that. And so I'd also like to report the progress we've been making, so  
13 since July 1<sup>st</sup> of last year, we disbursed a little bit over \$7,600,000.00. Which is pretty good and  
14 since January 2015, it's a little over \$9,500,000.00. So we haven't broken the \$10 million mark  
15 but we should here in the very near future. I thank everybody's help on that. And a couple of  
16 other items that we need to bring up that I brought up the last time, is our unfunded accounts.  
17 Ms. Ketron has worked really hard and we're down to 11 and I think Ms. Duty's ready to speak  
18 on behalf of those 11 that we haven't resolved at this time, on the unfunded. If we can get those  
19 squared away, we will do away with that account and I see no reason why we would ever  
20 establish that.

21 **Butch Lambert:** Do you by any chance have this...

22 **Rick Cooper:** I do have that. It's hard to read. But, people don't know, years ago, previous  
23 people, anytime there's an item pooled, they put it on the unfunded until it actually had some  
24 money to go into it and it got larger than what they could handle and so it got neglected, in all  
25 honesty, and there were a couple of hundred accounts and Ms. Ketron has worked hard the last  
26 two years to get them down to where we're at. We're down to the final 11.

27 **Paul Kugelman, Jr.:** Wow.

28 **Butch Lambert:** And every one of these have had an issue. They've been real hard to resolve  
29 and Magnum Hunter was two of those. One of those has been setting out there for 12 years that  
30 we resolved.

31 **Butch Lambert:** First of all Rick, lets' start out by what you think you know from the Gas and  
32 Oil Division. Eleven accounts, shows production, no money in escrow.

1     **Rick Cooper:** That is correct.

2     **Butch Lambert:** Okay. Ms. Duty?

3     **Mark Swartz:** Well, I'm going to let her talk about of them but most of these, the majority of  
4     these accounts, I think, were not being escrow because of the \$25.00 rule and some of them may  
5     have crawled about that and we didn't catch it, but for example, the first one is \$11.64 and there  
6     is, to give you another example, the third one down should be a zero balance because you can't  
7     even generate a penny when you run the division interest. The fourth one, I guess it's the fifth  
8     one, is \$1.04. Don't have a number for the next one, the next one is \$85.20, the next one is \$2.00,  
9     the next one was \$12.00, the next one was \$30.68 and \$57.58. The two problems as I see it are  
10    the second one, which is \$613.54 and the fourth one, which is \$2,285.87, and Anita's  
11    instructions and I'll let her talk about some of these issues, but Anita's instructions to her people  
12    is to pay these amounts into escrow to the extent that they haven't been paid, they're scheduled  
13    to be paid in the next round of payments. So that's, in general, my take on this exhibit. Anita, if  
14    you've got anything to add, obviously, go for it.

15    **Anita Duty:** Well, and I just want to make sure that, not that its' an excuse, but to understand the  
16    \$25.00. Normally, even if an owner or any entity that we pay, if it doesn't exceed \$25.00, we  
17    don't make a payment, and that should not be the rule on the escrowed accounts and that's been  
18    changed and updated, so that's the reason that some of these are there but that's not the reason  
19    for all of them. But just so you understand, anytime, it doesn't matter if it's an individual owner  
20    that's getting paid directly, if it doesn't reach \$25.00, we don't make those payments and that  
21    was the same rule we had here. We've since changed that on these escrowed accounts.

22    **Butch Lambert:** So when can Mr. Cooper expect those monies to be paid into the account?

23    **Anita Duty:** All of those, except for the BG121 and the CC30, all of those are being sent for  
24    processing right now and they should be in the next deposits that come through. And if not this  
25    month, they will be in the October checks. I'll know for sure, she's supposed to have known for  
26    sure today. They were trying to process yesterday but it didn't complete, so she should know for  
27    sure today, but the other two amounts are the BG121 and the CC30, those are the only two that  
28    we may need till the end, after this processing is done and it may be October.

29    **Butch Lambert:** So Rick, your staff will continue to monitor.

30    **Rick Cooper:** Yes. We will report next Board meeting.

31    **Butch Lambert:** Okay.

32    **Anita Duty:** And she will send me verification of the deposits and everything, like, as soon as it  
33    happens this month and I'll go ahead and send that to you.

34    **Butch Lambert:** Okay.

1 **Anita Duty:** When it happens.

2 **Butch Lambert:** Any questions from the Board?

3 **Mark Swartz:** Just to add something to Anita's account that she left out. This is a large company  
4 and there's all these departments, okay? And the Royalty Accounting Department wants the  
5 numbers to be right before they make a deposit and we had finally gotten up high enough, Anita  
6 and I, high enough in the organization to cause pressure to come down. We don't care if the  
7 amount is right, it's what you think should be deposited, you need to make the deposit and fix the  
8 number later, and so they now understand that as well. Okay? So it's not just, you know, the  
9 \$25.00 rule, we never even thought about that, I mean, and we're like "well, that's why" but it  
10 shouldn't apply to escrow account. But the other thing is, don't wait to get your numbers right.  
11 You know, there's a division of interest, you're doing the math, its generating deposit number to  
12 make the deposit and so these two, the CC30, for example, we are pretty sure that deposit  
13 amount is going to change with additional title work, okay? But they have been instructed to  
14 make that deposit because that's the number that we have at the moment and fix it later. So part  
15 of this issue was, the Accounting Department didn't want to pay "the wrong number", and our  
16 view is, you need to pay the best number you have and so, I think we've solved that problem. In  
17 terms of moving forward so it hopefully doesn't happen.

18 **Butch Lambert:** Okay. Just the housecleaning issue and it's aggravating Rick and his staff like  
19 crazy.

20 **Mark Swartz:** No, but we take this stuff seriously and she was getting no assistance and I had to  
21 get involved because it's a different department and they don't think it's important. It is  
22 important to us and to you.

23 **Butch Lambert:** It is.

24 **Rick Cooper:** Four items of interest. Working with citizen, Mr. Kenneth Osborne, he'd  
25 requested, and I think I talked to Anita about deposits and W34 and W35.

26 **Butch Lambert:** Is this related to several months ago when we asked you to work directly  
27 with...

28 **Rick Cooper:** Yes, it is. Anita, what's the status of W34 and W35?

29 **Anita Duty:** I have the same issue that I had on some of these other accounts. I know she's  
30 working through, I think those are supposed to be made this week also, or today. So I can, I sent  
31 her an email earlier and I haven't had a chance to look to see if she's answered me but I think  
32 that is resolved with this check run too.

33 **Butch Lambert:** Is that the deposit in the accounts that's due the Osbornes and the...

1 **Rick Cooper:** Yep! The W34 and 35 are two accounts that have been, I guess there've been no  
2 deposit in one of them for two years and no money and one of them for four years and they've  
3 been producing all along. And those will be made this week?

4 **Anita Duty:** That should be part of what she's doing, working on the check run for today,  
5 yesterday and today.

6 **Rick Cooper:** But to make that clear, these wells have produced for a good period of time but  
7 the deposits just stopped two years ago.

8 **Anita Duty:** One time they were stopped because the disbursements were pending and then we  
9 had issues with, we had the one W34, I don't know which one it was, it was on hold forever and  
10 they never went ahead and put it back on pay.

11 **Rick Cooper:** That's correct. So there's no deposits?

12 **Anita Duty:** Yes. It wasn't that we just stopped. We told them to put it on hold because we had  
13 filed a disbursement, just like we do with all these. Every time we file disbursements we say, put  
14 them on hold.

15 **Butch Lambert:** Just keep in mind, what we heard this morning from, I think it was Ms. Horne  
16 that said the Inspector General's Office had been involved. That's part of the...

17 **Rick Cooper:** Brenda Justice.

18 **Butch Lambert:** Brenda Justice. That's part of the whole issue with the Osborne's and them  
19 claiming they're not getting paid. That's why the Inspector General's Office is involved so, if we  
20 could speed that up and get that corrected, that sure would take a lot of pressure off this Board  
21 and Mr. Cooper.

22 **Mark Swartz:** Hopefully get paid too.

23 **Anita Duty:** Yeah, but I can let Mr. Cooper know for sure. Just like I'll let him know with the all  
24 the same check runs should have handled the unfunded accounts and the normal monthly  
25 deposits.

26 **Butch Lambert:** Anything further, Rick?

27 **Rick Cooper:** Not at this time.

28 **Butch Lambert:** If the Board's okay with this, I'd like to throw out the motion that for the  
29 October meeting, we changed the date from the 18<sup>th</sup> to the 25<sup>th</sup>. If the Board's okay since some  
30 of us has got to be out of town and won't be able to make the meeting and we may not have a  
31 quorum if we do that.



1 **Rita Surrat:** I'm going to be in Richmond the 25<sup>th</sup>.

2 **Mary Quillen:** Change it to the 25<sup>th</sup>?

3 **Butch Lambert:** 25<sup>th</sup>.

4 **Rick Cooper:** That'd be the fourth Tuesday.

5 **Butch Lambert:** Fourth Tuesday.

6 **Mary Quillen:** I believe that's okay with me.

7 **Donnie Rife:** I believe I'll be in Atlantic City.

8 **Bruce Prather:** I think I've got a doctor's appointment.

9 **Donnie Ratliff:** I'll give you an opinion and not charge. [Laughs]

10 **Butch Lambert:** We may not have a quorum for the 25<sup>th</sup> then.

11 **Paul Kugelman, Jr.:** Do you know how many items we have on the October agenda?

12 **Butch Lambert:** That's what I was going to ask. Do we know yet? The number of items?

13 **Rick Cooper:** We've got more than 15 and they're all this type of situations we've talked about

14 today.

15 **Butch Lambert:** Okay. If it's okay with the Board then we'll reset the date for the 25<sup>th</sup> and

16 hopefully we'll have a quorum.

17 **Item Number 22**

18 **Butch Lambert:** Okay, one final item. The approval of the July minutes.

19 **Donnie Rife:** Move to approve the July minutes as presented, Mr. Chair.

20 **Donnie Ratliff:** I'll second that, Mr. Chair.

21 **Butch Lambert:** I have a motion and a second. All in favor, signify by saying yes.

22 **Board:** Yes.

23 **Butch Lambert:** We have a motion to adjourn.